

## GENERAL PROVISIONS FOR COMMERCIAL CONTRACTS

- 1. INTERPRETATION.** The terms and conditions stated in this Contract shall constitute the entire agreement between the Buyer and the Seller, and no modification thereof shall be binding upon the Buyer unless made in writing and signed by its Authorized Procurement Representative. By shipping the supplies, or by acknowledging receipt of this Contract, or by performing the described work, Seller agrees to such terms and conditions. Reference to any form or communication of the Seller shall not be deemed to be an acceptance by the Buyer of any modifications or additions to the terms and conditions herein. Any different or additional terms or conditions in any proposal, acknowledgment form or any document of Seller are hereby superseded by this Contract. Failure of either party (Buyer or Seller) to insist on strict performance of any terms and conditions herein shall not be deemed a waiver of that term or any right or remedy of that party.
- 2. INSPECTION / ACCEPTANCE.** The Seller shall only tender for acceptance those items that conform to the requirements of this contract. The Buyer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Buyer may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Buyer may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Buyer must exercise its post-acceptance rights-

  - a. Within a reasonable time after the defect was discovered or should have been discovered; and
  - b. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- 3. INDEMNITY.** Each party shall indemnify, defend, and hold harmless the other, its officers, directors, employees, and agents, from and against liability incurred by the other caused by or arising from the negligence, gross negligence, or intentional misconduct of the indemnifying party, its officers, directors, employees, and agents. Each party shall indemnify the other and its officers, directors, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the indemnifying party is reasonably notified of such claims and proceedings.
- 4. RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller until, and shall pass to the Buyer upon:

  - a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin and packaged to prevent damage during transit; or
  - b. Delivery of the supplies to the Buyer at the destination specified in the contract, if transportation is f.o.b. destination.
- 5. TAXES.** The contract price includes all applicable Federal, State, and local taxes and duties. Supplies, materials or services provided under this Purchase Order are exempt from taxes per Section 11-204 of the Maryland Sales and Use tax statute, [Exemption Certificate Number 31204306](#).
- 6. TERMINATION FOR THE BUYER'S CONVENIENCE.** The Buyer reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- 7. TERMINATION FOR CAUSE.** The Buyer may terminate this contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Buyer shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to the Buyer for any and all rights and remedies provided by law. If it is determined that the Buyer improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- 8. TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Buyer upon acceptance, regardless of when or where the Buyer takes physical possession.
- 9. WARRANTY.** The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- 10. LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Seller will not be liable to the Buyer for consequential damages resulting from any defect or deficiencies in accepted items.

- 11. OTHER COMPLIANCES.** The Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- 12. STOP WORK ORDER.** Buyer may, at any time, by written order to the Seller, require Seller to stop all, or any part, of the work under this Contract. Upon receipt of such order, Seller shall immediately comply with terms and take reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop-work order issued under this Contract is canceled Seller shall resume work. If appropriate, the Buyer shall make an equitable adjustment in the delivery or performance schedule or the contract price, or both the schedule and price. The Seller shall make its request in supportable detail for such equitable adjustment, if any, within thirty (30) days after the end of the period of the work stoppage.
- 13. CHANGES.** The Buyer may at any time, by written order change within the general scope of its Contract in any one or more of the following:
- drawings, designs, or specifications when the supplies, services or construction to be furnished are to be specially manufactured or performed in accordance with the drawings, designs, or specifications
  - description of services to be performed
  - time, date or place of delivery or performance; or
  - method of shipment or packing
- If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under this Contract, whether or not changed by the order, the Buyer shall make an equitable adjustment in the contract price, the delivery or performance schedule, or both the price and the schedule. The Seller must assert its rights to an adjustment under the clause within thirty (30) days from the date of receipt of the written order. Failure to agree to any adjustment is a dispute under the Disputes paragraph herein, however, nothing in this paragraph shall excuse the Seller from proceeding with the Contract as changed
- 14. DISPUTES.** This agreement shall be governed by and subject to the jurisdiction of the United States and its laws. Any dispute arising under or related to this Contract shall be resolved, to the maximum possible extent, through negotiation and settlement between the parties. Failing settlement, despite good faith efforts by both parties to resolve the dispute, either party may pursue appropriate legal remedy in a court of competent jurisdiction, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR supplements, and (ii) contract provisions that have been flowed down from a contract with the U.S. Government shall be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. Pending final resolution of any dispute, Seller shall proceed diligently with performance of this contract according to Buyer's instructions. Notwithstanding the above, purchase orders with the U.S. Government shall be governed solely by Federal Law.
- 15. ASSIGNMENT.** Neither party may assign this contract or moneys payable in whole or part, thereunder without the other's permission.
- 16. RELEASE OF SECURITY INTEREST.** All supplies, materials or items delivered and all labor performed under this Contract shall be free of all security interests, liens or encumbrances and, if the Buyer requests, a proper release of all security interests, liens or encumbrances, or other satisfactory evidence of freedom from security interest, liens or encumbrances will be delivered to the Buyer.
- 17. COMPLIANCE WITH EXPORT CONTROL LAWS.** Contractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including the requirements of the International Traffic in Arms Regulation (ITAR), 22 CFR 120 et seq. and Export Administration Regulations (EAR) (15 CFR Parts 730-774). Contractor agrees that except as allowed under applicable U.S. laws and regulations, no export controlled item, data or services furnished to it hereunder will be disclosed to any foreign person, firm or country including foreign persons employed by or associated with or under contract with Contractor. Contractor shall first notify and obtain the written consent of APL prior to submitting any request for authority to export any technical data or services furnished to it hereunder. If export controlled equipment, data or services are furnished to Contractor hereunder, Contractor agrees to maintain an export compliance plan and take measures to ensure that no technical data is disclosed and no defense services or equipment are furnished to foreign persons except as authorized hereunder.
- 18. ADVERTISING RELEASE OF INFORMATION.** The Seller shall not, without first obtaining the written permission of the Buyer, in any manner advertise or publish the fact that the Seller has furnished or contracted to furnish to the Buyer the goods or services called for under this order.
- 19. EQUAL OPPORTUNITY.** Buyer is an equal opportunity employer and federal contractor or subcontractor. Seller agrees to comply with the requirements of 41 CFR 60-1.4(a). **In addition, Seller will abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with a disability. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in**

**employment individuals without regard to protected veteran status or disability.** Seller also agrees that, as applicable, it will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

The clause listed below as referenced in Title 41 of the Code of Federal Regulations (CFR) is incorporated herein and made a part hereof by this reference. Copies of the CFR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325. Also, the full text of a clause may be accessed electronically at: <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

**20. TERMS APPLICABLE TO CONTRACTS ISSUED UNDER US GOVERNMENT CONTRACTS.** The below terms are only applicable to contracts performed under U.S. government contracts. The Seller shall provide a right of access to Buyer, Buyer's sponsors, and/or and regulatory authorities to all facilities involved in this Contract and to all applicable records. This Contract does not confer to Seller any direct claim or direct course of action against the US Government. As required under the Federal Acquisition Regulations, Seller shall ensure the flow down of the below mandatory clauses to their suppliers, as applicable.

[52.203-19](#) Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)

[52.204-25](#) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

[52.204-23](#) Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)

[52.222-50](#) Combating Trafficking in Persons (JAN 2019)

[52.247-64](#) Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

**In addition to the above, the following are also applicable as noted:**

[52.203-13](#) Contractor Code of Business Ethics and Conduct (JUN 2020) *Applicable to contracts greater than \$6M*

[52.204-21](#) Basic Safeguarding of Covered Contractor Information Systems (JUN 2016) *Applicable to other than commercially available off-the-shelf items, in which the Seller may have Federal contract information residing in or transiting through its information system.*

[52.219-8](#) Utilization of Small Business Concerns (OCT 2018) *Applicable to contracts greater than \$250K.*

[52.222-21](#) Prohibition of Segregated Facilities (APR 2015) *Applicable to contracts greater than \$10K when work will be performed within the US or by employees recruited within the US.*

[52.222-26](#) Equal Opportunity (Sept 2016) *Applicable to contracts greater than \$10K when work will be performed within the US or by employees recruited within the US.*

[52.222-35](#) Equal Opportunity for Veterans (JUN 2020) *Applicable to contracts greater than \$250K when work will be performed within the US or by employees recruited within the US.*

[52.222-36](#) Equal Opportunity for Workers with Disabilities (JUN 2020). *Applicable to all contracts greater than \$15K when work will be performed within the US or by employees recruited within the US.*

[52.222-37](#) Employment Reports on Veterans (JUN 2020) *Applicable to all contracts greater than \$150K when work will be performed within the US or by employees recruited within the US.*

[52.222-40](#) Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) *Applicable to contracts greater than \$10K when work will be performed within the US or by employees recruited within the US.*

[52.232-40](#) Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) *Applicable to US Sellers only.*

[252.239-7010](#) Cloud Computing Services (OCT 2016) *Applicable when supplier is providing information technology services in the performance of the contract.*