

**NATIONAL STEEL AND SHIPBUILDING COMPANY**

**MRO PURCHASE ORDER**

**TERMS AND CONDITIONS**

**1. Definitions**

- (a)       **“Buyer”** means National Steel and Shipbuilding Company, aka General Dynamics NASSCO or NASSCO. In the context of an equipment rental, “Buyer” shall mean “Lessee”.
- (b)       **“Contract”** means the aggregate combination of the Purchase Order, these terms and conditions referred to as the MRO document, 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 does 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.
- (c)       **“Contract Price”** means the total amount to be paid in consideration of Seller’s full performance.
- (d)       **“Contract Work”** means the products, material, apparatus, equipment, supplies, articles, data, services and/or goods which are the subject of the Contract.
- (e)       **“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 government. Failures or delays caused by a Force Majeure circumstance are neither compensable nor a breach.
- (f)       **“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 place in, created by or through Seller or its Suppliers.
- (g)       **“Manufacturing Materials”** means 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.
- (h)       **“NASSCO”** means National Steel and Shipbuilding Company.
- (i)       **“OCM”** means Original Component Manufacturer.
- (j)       **“OEM”** means Original Equipment Manufacturer.
- (k)       **“PIR”** means Problem Identification Report.
- (l)       **“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.
- (m)       **“Purchase Order”** means any written instrument from Buyer for Contract Work. The Purchase Order is an integral part of the Contract.
- (n)       **“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.
- (o)       **“Seller”** means the party identified in the Contract to provide the Contract Work, as well as all of their directors, officers, and employees. In the context of an equipment rental, “Seller” shall mean “Lessor”.
- (p)       **“Specifications”** means all specifications, plans, data, drawings, diagrams, work schedules that describe the Contract Work.
- (q)       **“Supplier”** means any vendor, subcontractor or entity providing products, goods, services or other items to Seller used in support of the Contract.

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

**2. Acceptance, Integration, Amendment and Governing Law**

- (a)       Any performance by Seller shall constitute complete Contract acceptance. The parties agree that a signed acknowledgement is not a condition precedent to the Contract enforceability by either party.
- (b)       Any terms proposed in the acceptance of the 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. 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 the 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 or successor contractor pursuant to the requirements under Buyer's customer contract.

### **4. Changes**

(a) Buyer may at any time, by written order, make changes to the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the Contract, Buyer shall make an equitable adjustment in the Contract Price, the performance or delivery schedule, or both, and shall so modify the Contract. If Buyer changes the Contract performance or delivery date(s) such that Seller is required to work overtime, Buyer shall pay therefor an amount equal to Seller's actual additional labor costs occasioned by such overtime.

(b) Buyer's engineering and technical personnel 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 Changes paragraph and shall not be the basis for any equitable adjustment. Only Buyer's authorized Procurement Representative may change the Contract.

(c) Within 20 days from the date of receipt of any written change order, Seller shall submit to Buyer a detailed written estimate of the impact of the change on the Contract Price, the performance or delivery schedule, and the performance capabilities of any Contract Work. Upon receipt of this estimate, Buyer shall begin good faith negotiations with Seller to determine an equitable adjustment to the Contract.

(d) The failure of the parties to agree to any equitable adjustment shall be a dispute under the Disputes paragraph of the Contract. Nothing in this Changes Clause, however, shall excuse Seller from proceeding with diligent performance of the Contract as changed.

### **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 pursuant to 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 for 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' *Standard 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 of Data and Information**

Information furnished by Buyer and identified as "NASSCO Proprietary/Trade Secret Information" or otherwise identified as subject to restricted access or dissemination shall be and remain property of Buyer; shall not be duplicated, used or disclosed to third parties except for the purpose and to the extent necessary for the Contract performance; and upon Contract completion, shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Seller shall take all reasonable precautions to maintain in confidence all such information, including the imposition upon any person, firm, or corporation to whom disclosure of such information is made in the course of Contract performance of conditions relating to the confidential treatment thereof to the same effect as those imposed upon Seller herein. The obligations imposed upon Seller herein shall not apply to such information that is already known to Seller, is lawfully obtained or obtainable by Seller from another source, is or comes into the public domain other than as a result of breach of this Confidentiality of Data and Information Clause. Absent contrary instructions, Seller shall destroy all NASSCO proprietary or confidential information within one (1) year after termination or completion of the Purchase Order or Contract, and provide a written acknowledgement to the Buyer of such destruction.

## **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 Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts will not be returned to Seller or the supplier. Buyer reserves the right to quarantine any and all Counterfeit Electronic Parts or 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 the 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. 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 NASSCO 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 NASSCO 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.

#### **11. 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 federal or district court in San Diego, 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.

#### **12. Export Control Compliance and Cooperation**

Seller shall comply with the Export Administration Regulations (15 CFR 730—774) and the regulations issued by the Office of Foreign Assets Control (31 CFR Chapter V), all other applicable laws, regulations and orders that control the export of commercial and dual-use items and associated technology. In addition, Seller shall inform Buyer in writing of the name and citizenship of each employee of Seller and Seller's subcontractors at any tier who will participate in the performance of the Contract at Buyer's facilities who is not a United States citizen or lawful permanent resident and the name and address of each subcontractor at any tier who will participate in such performance that is not organized under the laws of any state of the United States. Seller shall cooperate fully with Buyer in applying for any export license or approval, which may be required for any such employee or subcontractor and in justifying and documenting any license or approval exception. Seller shall not permit any such employee or subcontractor to participate in the performance of the Contract over Buyer's objection based on noncompliance with this Export Control Compliance and Cooperation paragraph. Furthermore, all information from Seller that is provided to Buyer and that is 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.

### **13. 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.

### **14. 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.

### **15. 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, including any claim or adjudication that Buyer is a joint employer with Seller, to the extent permitted by law, 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 claims for resulting penalties; 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, except to the extent such claims, demands, causes of action, damages and liabilities are caused by Buyer. 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.

### **16. Independent Contractor**

Seller is an independent contractor. Buyer is not an employer of Seller or Seller's workers and is not a joint employer with Seller. 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) NASSCO 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 warranty 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 and the Healthy Workplaces, Healthy Family Act of 2014 (California Labor Code Section 245 *et seq.*), if the Acts apply 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 NASSCO harmless for all loss, 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, as well as to any claim or adjudication that Buyer is a joint employer with Seller.

### **17. Inspection and Acceptance**

The Contract Work, including any documents, materials, equipment, and facilities, shall at all times be available for inspection and testing by Buyer. Buyer's inspection or failure to inspect shall not relieve Seller of any obligations or liability under the Contract, nor shall it constitute acceptance of the Contract Work. Seller shall repair, re-perform or replace any nonconforming Contract Work at Seller's expense within 10 days of Buyer's written notice of nonconformance. If Seller has not repaired, re-performed or replaced such nonconforming Contract Work within the 10-day period, Buyer may repair, re-perform or replace such nonconforming Contract Work at Seller's expense. The Contract Work shall be accepted when Buyer determines that it conforms to the Contract, and such acceptance shall be conclusive of conformance except for latent defects, fraud or gross negligence.

### **18. Insurance**

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

(1) Commercial General Liability insurance with coverage to include broad form property damage, personal injury, premises, completed operations, and products and contractual liability for Seller's liability assumed under the Contract including that of its 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.

(2) When Seller, its employees, agents or subcontractors (including delivery persons) enter any facility owned, leased or operated by Buyer, then Seller shall also maintain:

(a) 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.

(b) Workers' Compensation and Longshore and Harbor Workers' Compensation Act insurance with minimum limits of liability conforming to the statutory requirements of the State of California and the United States of America, respectively.

(c) Employer's Liability insurance with minimum limits of \$1,000,000.

(3) For Contract Work consisting of engineering services, consulting, construction management or construction services, Seller shall keep and maintain in effect at its sole cost and expense professional liability (errors and omissions) coverage with minimum limits of liability of \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

(4) If Seller's employees, subcontractors or suppliers are assigned aboard a Vessel for any reason, Seller shall maintain Maritime Employers Liability (Jones Act) coverage with minimum limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) 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 subparagraphs (a)(1) and (a)(2)(a) shall be endorsed to name NASSCO as an "additional insured". The policies referred to above in subparagraphs (a)(2)(b), (a)(2)(c) and (a)(4) shall contain a waiver of subrogation in favor of Buyer.

(c) 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.

(d) 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.

(e) 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.

## **19. 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.

## **20. Liens with Right of 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.

## **21. Limitation on Liability**

**EXCEPT FOR THE RIGHTS AND OBLIGATIONS SET FORTH IN THE INDEMNIFICATION AND WARRANTY CLAUSES, 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.**

## **22. Loss, Destruction or Damage of Rental Property**

Lessee shall not be liable for the loss of or damage to the rental property unless directly caused by Lessee's negligence or intentional misconduct in the care, operation or use of the rental property during the term of the Contract. Lessor shall not have, or be entitled to make, any claim for any such loss or damage unless Lessor gives Lessee: (a) written notice of any nature, extent and amount of such loss or damage within 48 hours after Lessor retrieves the rental property; and (b) the opportunity to inspect the rental property within 7 days after retrieval. In no event shall Lessee be liable for loss of rent or for any other consequential damages.

## **23. 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.

## **24. 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.

## **25. 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: National Steel and Shipbuilding Company, 2798 East Harbor Drive, San Diego, CA 92113, or P.O. Box 85278, San Diego, California 92186-5278, 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.

## **26. 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) the Supplemental General Purchase Order Terms and Conditions applicable to Contract Work performed at NASSCO or Customer Facilities or when access is granted to NASSCO's or Customer's Facilities
- (d) the Special Terms and Conditions, if any;
- (e) the Specifications, and within the Specifications, Specifications shall prevail over drawings;
- (f) other documents incorporated by reference into the Contract; and
- (g) the procurement related certifications or supplier qualification statements signed by Seller and provided to Buyer.

## **27. 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 NASSCO 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) NASSCO'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 NASSCO 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 NASSCO Logistics Department 3-4 days prior to vessel departure from port of origin. In addition, updates and corrections must also be provided to the NASSCO 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.

## **28. 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.

## **29. 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.

## **30. Property Rights in the Contract Work**

All data and materials prepared or developed by Seller in connection with the performance of the Contract Work shall be Buyer's exclusive property and shall be provided to Buyer upon completion of performance of the Contract, upon termination of the Contract, or upon Buyer's earlier request.

## **31. 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.

(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 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. 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.

## **32. Scope of Performance**

(a) When the words "or equal" are used in the Contract or Specifications, proposed "equals" must be approved 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 at the Facilities. 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.

### **33. 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.

### **34. Standard of Performance**

(a) Seller shall perform the Contract Work using reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by reputable similar persons or entities in providing the same or similar services under similar circumstances. Seller is on notice that Buyer is relying on the care, skill, diligence and judgment exercised by Seller in performing the Contract Work.

(b) Seller shall be responsible to Buyer for acts and omissions of Seller's employees, subcontractors, and their agents and employees, and other persons, including engineers, and other design professionals, performing any portion of Seller's obligations under the Contract.

(c) If Seller subcontracts any portion of the Contract Work, Seller shall provide Buyer with the name and address of such subcontractor prior to executing such subcontract. Buyer may decline the usage of such subcontractor based on Buyer's independent evaluation of subcontractor's qualifications.

(d) The Contract Work and their components shall be new and of suitable grade of their respective kinds for their purpose. Upon Buyer's request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Work.

(e) Design services required by the Contract shall be performed by qualified engineers and other design professionals, who are properly licensed. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of Seller.

### **35. Submittals and Approvals**

(a) Seller shall promptly submit to Buyer all documents that require Buyer's review and approval, and Buyer shall promptly approve or reject Seller's submittals.

(b) Approvals provided by Buyer under the Contract, however, shall not relieve Seller of its obligation to comply with all terms of the Contract and shall not impose upon Buyer any obligation or liability that Buyer would not have had in the absence of such approvals.

### **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; 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; Termination, Waiver and Warranty.

### **37. Termination**

(a) Buyer may terminate the Contract for convenience or default at any time with 10 days prior written notice. In the event of a termination for convenience, Buyer shall pay Seller for Contract Work properly performed up to the date of termination.

(b) Buyer may terminate the Contract for default if Seller: fails to assure timely performance; fails to perform on time; ceases performance prior to completion of the Contract; evidences insolvency or financial inability to perform; or fails to cure the material breach of any other provision of the Contract within 10 days of notice of such breach. Buyer may also request written adequate assurances from Seller if in Buyer's opinion

Seller is falling behind in its performance or is likely to breach the Contract. Failure to provide written adequate assurances shall constitute a material breach of the Contract.

(c) In the event Buyer terminates the Contract in whole or in part, Buyer may procure, upon such terms and in such manner as Buyer may reasonably determine, services similar to the Contract Work and/or products similar to the Contract Work specified herein, and Seller shall be liable to Buyer for any excess costs for such similar services and/or products. If the Contract is terminated only in part, Seller shall continue the performance of the Contract to the extent not terminated.

(d) If Buyer terminates all or any part of the Contract for default:

(i) 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.

(ii) 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 the 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.

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

### **38. 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.

### **39. 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 refuses 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.

### **40. Waiver**

A party's failure to insist on strict performance of any Contract provision shall not be construed as a waiver, and shall not affect that party's right to exercise any right or remedy.

### **41. Warranty**

(a) Seller expressly warrants for a period of 1 year from acceptance by Buyer that all Contract Work shall conform to the Contract and be performed in a proper and workmanlike manner, and that all Contract Work shall conform to the Contract and be free from defects in design, material, workmanship and fabrication. If any nonconformities or defects are discovered in the Contract Work which are not caused by Buyer, Seller shall repair, replace or re-perform any nonconforming or defective Contract Work at Seller's sole expense within 10 days of Buyer's written notice. If Seller has not repaired, replaced or re-performed such nonconforming or defective Contract Work within the 10-day period, Buyer may repair, replace or re-perform such nonconforming or defective Contract Work at Seller's expense.

(b) Seller hereby assigns to Buyer all warranties provided by the manufacturers of all Contract Work and their components.

(c) For rental property Lessor expressly warrants that the rental property shall be in first class condition, in good working order, in conformance with the Contract, and equipped with all required safety devices as to operate properly and render safe, efficient, economical and continuous service. If the rental property fails to operate properly or fails to render safe, efficient, economical and continuous service at any time during the term of the Contract, Lessee shall so notify Lessor, and immediately upon such notification Lessor shall, at Lessor's sole expense, either: (a) retrieve the rental property and replace it with properly operating and satisfactory equivalent rental property; or (b) make or pay for such repairs or maintenance as may be necessary to restore the rental property to properly operating and satisfactory condition. Lessee shall not be responsible for payment of the Contract Price for any period during which the rental property is out of service owing to its failure to operate properly or fails to render safe, efficient, economical and continuous service, unless such failure is directly caused by Lessee's negligence or intentional misconduct in the use or operation of the rental property.

(d) Lessor expressly warrants that it has good title to the rental property and the right to enter into the Contract. Lessee shall not be required under any circumstances to surrender the rental property or pay any portion of the Contract Price to any person or entity other than Lessor pursuant to any lien, levy, attachment, writ or execution, court order, judicial sale, or any other legal process.

**42. Work Containing Covered Telecommunications and Video Surveillance Equipment and Services**

Seller shall comply with FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment and comply with and provide representations required by FAR 52.204-26, Covered Telecommunications Equipment or Services—Representation, even if Seller provides services, commercial items, or Commercial Off-The-Shelf (COTS) items. In addition, Seller shall flow-down FAR 52.204-25 to its subcontractors or suppliers at any tier or level. Seller shall provide its representation as required by FAR 52.204-26, with term “Offeror” as used in the clause meaning “Seller,” and with the term “Government” meaning “Buyer.”