

<b>Table of Contents</b> <i>(In alphabetical order for convenience only)</i>	
Clause Title and Clause Number	Clause Title and Clause Number
Acceptance of Order .....6	Independent Contractor ..... 3
Acceptance or Rejection of Work .....14	Industrial Participation Obligations ..... 36
Advertising, Use of Name.....27	Inspection ..... 13
Applicable Laws .....40	Insurance and Precautions ..... 29
Assignments, Changes to Name and Place of Manufacture.....38	Intellectual Property ..... 26
Changes.....18	Non-Waiver ..... 41
Communications .....37	Packing and Shipment ..... 4
Compliance with Laws.....34	Payment..... 9
Conflict of Interest .....28	Property ..... 8
Counterfeit Parts .....16	Proprietary Information/Cybersecurity ..... 25
Defective Cost and Pricing Data .....12	Records..... 21
Definitions.....1	Stop Work Order ..... 22
Delivery, Notice of Delay .....5	Subcontracting ..... 32
Diminishing Manufacturing Sources .....17	Survivability ..... 43
Disputes.....39	Tariff-Benefits Pass-Through..... 11
Entire Agreement .....42	Taxes ..... 31
Export Controls .....35	Termination/Cancellation ..... 23
Force Majeure .....33	Title and Risk of Loss..... 7
Headings .....2	Warranty ..... 15
Indemnification .....30	Writings Required/Applicable Language ..... 20

**1. DEFINITIONS**

As used throughout these terms and conditions, the following shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC.

“Buyer’s Authorized Procurement Representative” means the person(s) identified in the Order who is delegated with the procurement authority to execute and administer the Order.

“Customer” means a customer under a Government Prime Contract.

“DFARS” means Department of Defense FAR Supplement, issued as Parts 200-299 of Chapter 2 of Title 48, Code of Federal Regulations.

“FAR” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

“Goods” means those products, supplies, reports, computer software, hardware, data, materials, articles, items, parts, components, or assemblies, as described in the Order.

“Government” means the Government of the United States of America or any department, agency, or instrumentality thereof, and any successor thereof.

“Order” means the instrument of contracting, such as “Purchase Order,” “PO,” “Subcontract,” or other such instrument of contracting, issued by Buyer to Seller, to which these Terms and Conditions are applicable, and all other referenced documents, exhibits, attachments and amendments. If these Terms and Conditions are part of a “long term agreement,” “master agreement” or other “umbrella” type of agreement that provides for releases (in the form of a purchase order or other such document) the term Order shall also mean the release document(s) for which the Work is the subject matter.

“Party” means each of Buyer and Seller, and collectively “Parties.”

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**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

“Prime Contract” means the contract between Buyer and a Government Customer for the acquisition of the Work.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the Work provided for herein.

“Services” means Seller’s, or its subcontractors or suppliers, time and effort and labor hours to perform the tasks described in or furnished under the Order.

“Terms and Conditions” means the terms and conditions set forth in these TC-05 Terms and Conditions for Time & Materials and Labor Hour, USG Orders.

“Work” means Goods and Services together or Goods and/or Services, as described in the Order and as applicable from the context thereof .

## **2. HEADINGS**

The division of these Terms and Conditions into clauses, and the insertion of headings are for convenience of reference only and shall not define, limit, or describe the scope or the intent of the Order nor shall they affect the construction or interpretation of these Terms and Conditions. The terms “these Terms and Conditions,” “hereof,” “hereunder,” and similar expressions in these Terms and Conditions refer to these Terms and Conditions and not to any particular clause, or other portion and include any Terms and Conditions supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to clauses are to clauses of these Terms and Conditions.

## **3. INDEPENDENT CONTRACTOR**

Seller is an independent contractor and not an agent or employee of Buyer either expressly or impliedly. For purposes of the Independent Contractor clause herein only, “Seller” shall also include Seller’s agents, representatives, subcontractors, and suppliers at any tier. The employees used by Seller to perform Work under the Order shall be Seller’s employees exclusively without any relation whatsoever to Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under the Order, and Buyer assumes no liability for the actions of Seller’s personnel. The Order will not constitute, create, give effect to, or imply a joint venture, teaming arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order will grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

## **4. PACKING AND SHIPMENT**

- a. The shipping terms for the Order shall be set forth on the face of the Order document.
- b. Seller shall properly package the Goods, including necessary boxing, crating, carting, marking, storage, or any associated services or activities, without additional charge, unless otherwise specified in the Order. Goods will be suitably packaged to secure the lowest transportation costs and to prevent damage in accordance with the requirements of common carriers and good commercial practices.
- c. Seller shall plainly mark Buyer’s Order number on all invoices, packages, bills of lading and shipping orders. Seller shall mark packages with necessary lifting, loading, and shipping information, including Buyer’s Order number, dates of shipments and other relevant information. Packing lists will be enclosed with each shipment. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

## **5. DELIVERY, NOTICE OF DELAY**

- a. Seller’s timely performance is a critical element of the Order.
- b. Seller shall perform and deliver Work strictly in accordance with the quantities and schedules agreed to pursuant to the Order and if Seller fails to deliver in accordance thereto, if unexcused by Buyer’s Authorized Procurement Representative, then Seller shall be considered in material breach of the Order. Seller represents that it has and shall continue to have and maintain sufficient production capacity to timely supply the volumes of Work in accordance with the Order.
- c. Any Work delivered prior to the agreed delivery dates or in excess of the agreed quantities and without written authorization from the Buyer’s Authorized Procurement Representative may, at the Buyer’s option, be
  - (i) retained by Buyer, without penalty; provided, however, Buyer may withhold payment for such Work until the agreed delivery date and Warranty shall not begin before the originally scheduled date of delivery, or

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

(ii) refused by Buyer and/or returned to Seller, at Seller's risk and expense, including handling and return shipment costs.

Notwithstanding the foregoing, however, Seller agrees that Buyer's acceptance of late, early or excess deliveries shall not be considered a waiver of this Delivery, Notice of Delay clause.

d. In the event of any anticipated, potential or actual delay, including but not limited to where Seller becomes aware or has reason to believe that there is or will be a decrease in its production capacity, including labor reductions, or an increase in its production requirements that would or could adversely impact Seller's capability to fully and timely meet the Order requirements and obligations, Seller shall:

- (i) immediately notify Buyer in writing of the anticipated, potential, or actual delay, and the reason(s) and the actions being taken to overcome or minimize the anticipated, potential, or actual delay;
- (ii) provide Buyer with a proposed written recovery schedule; and
- (iii) if directed by Buyer, expedite the shipping and routing of impacted Goods or accelerate the Services, at no additional cost to Buyer, as necessary to avoid or minimize delay to Prime Contract requirements to the maximum extent possible.

e. If a Force Majeure event occurs in accordance with the Force Majeure clause herein which might otherwise permit Seller to allocate production and delivery of its products that are Goods among Seller's various customers and to the extent Seller is continuing to manufacture, assemble and ship such Goods, Seller shall, to the extent legally able, allocate and deliver to Buyer, on a timely basis, one hundred percent (100%) of the Goods ordered by Buyer pursuant to the Order.

f. If Seller is unable to meet the required Work delivery and/or performance schedules for any reason, other than a change directed by Buyer pursuant to the Changes clause in these Terms and Conditions, Buyer shall have the option, in its sole discretion, to:

- (i) terminate all or part of the Order,
- (ii) fill all or part of the Order or any portion thereof, from sources other than Seller and to reduce Seller's Order accordingly at no increase in unit price, and without any penalty to Buyer, or
- (iii) accept late delivery of Work and recover from Seller any costs Buyer incurs because of the late delivery.

g. The rights and remedies provided in this Delivery, Notice of Delay clause shall not limit Buyer's other rights or remedies hereunder or pursuant to the Order, these Terms and Conditions or applicable law.

## **6. ACCEPTANCE OF ORDER**

a. The Order is Buyer's offer to Seller for the purchase of Work. Seller's acceptance of the Order creates a binding contract between Buyer and Seller for the purchase of the Work and constitutes the entire agreement of the Parties governing the Work. Acceptance of Buyer's offer is strictly limited to the provisions in the Order, including these Terms and Conditions. Any one of the following methods shall constitute acceptance of the Order by Seller:

- (i) acknowledgement in writing of acceptance;
- (ii) commencement of performance, or
- (iii) acceptance of payment.

b. After acceptance of the Order or at any time during performance of the Order and except as set forth in the Changes clause herein, modifications of the Order, to be binding, must be set forth in a separate written instrument provided by Buyer's Authorized Procurement Representative and accepted by Seller. The rights and obligations described in the Order will survive completion and final payment of the Order.

c. **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACCEPTANCE HEREOF ARE HEREBY OBJECTED TO BY BUYER. ANY SUCH PROPOSED ADDITIONAL OR DIFFERING TERMS OR CONDITIONS SHALL BE VOID AND HAVE NO EFFECT ON THE ORDER.**

## **7. TITLE AND RISK OF LOSS**

Risk of loss will pass to Buyer in accordance with the shipping term set forth on the face of the Order, regardless of when or where Buyer takes physical possession. Title will pass to Buyer at the destination specified on the face of the Order unless the Order

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

provides for other passage of title either specifically or by choice of shipping term. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item and shall not relieve Seller of any other obligations under the Order.

**8. PROPERTY**

- a. For purposes of this Property clause, such “Property” will include:
- (i) Property, equipment, materials and Special Tools of the Buyer and of its suppliers that are provided by or otherwise furnished to the Seller by or on behalf of Buyer for performance of and to satisfy the requirements of the Order (“Buyer-Furnished Property”);
  - (ii) Property, equipment, materials and Special Tools of the Government that are provided by or otherwise furnished to the Seller for performance of and to satisfy the requirements of the Order will be considered Government Property (“Government Customer Property”); and
  - (iii) Property, equipment, materials and Special Tools which may be acquired by Seller during and/or for performance of and to satisfy the requirements of the Order (“Acquired Property”).

“Special Tools” shall include any drawings, tools, jigs, dies, fixtures, molds, patterns, and manufacturing aids. Acquired Property shall be priced separately as a direct item of cost under the Order. Title shall pass to upon payment for any such Acquired Property and such Acquired Property shall be properly identified by Seller. Seller will hold all Property in good condition, except for reasonable wear and tear, and shall return or deliver to Buyer at the completion of the Order unless Buyer directs Seller otherwise in writing. Seller shall only use Property for performance of and to satisfy the requirements of the Order and Property shall not be altered unless the Order provides otherwise or Buyer consents in writing.

- b. Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all Property. Title to Property will remain with Buyer, its supplier or the Government Customer, as applicable. Seller shall maintain all Property in a condition as good as when received and Seller shall assume the risk of and be liable for all loss, destruction, or damage to Property while in Seller’s possession or control except for normal wear and tear, unless otherwise agreed to in writing by Buyer’s Authorized Procurement Representative.
- c. Seller shall have in place or establish and maintain a property management and control system that provides for adequate management and control measures to manage normal process variations of Property and to ensure compliance with the Order. Seller shall promptly notify Buyer if its property management and control system does not meet the requirements of FAR Part 45 and is in accordance with FAR 52.245-1 (SEPT 2021), unless some other date version or equivalent FAR clause is provided elsewhere as part of the Order. Seller shall immediately notify Buyer if its property management and control system is deemed inadequate by the Government. At all times, Buyer and its Government Customer, as applicable, shall have access to Seller’s facilities for the purpose of conducting periodic surveillance of or otherwise reviewing Seller’s compliance with the management of all Property related to the Order and compliance with applicable Government Customer regulations and requirements.
- d. Seller shall, if requested by Buyer in writing, conduct a physical inspection of the Property and promptly prepare a complete and thorough written inventory report containing the results of the physical inspection. Seller shall deliver such written inventory report to Buyer’s Authorized Procurement Representative within thirty (30) calendar days after Buyer’s request. If, upon Buyer’s demand to return any Property, Seller fails to return such Property, Buyer shall have the right, upon reasonable notice, to enter Seller’s premises and remove any such Property without being liable for trespass or damages of any sort. Seller shall immediately report the loss of any Property to Buyer, in a written report, for all losses outside the normal process variation, such as losses due to theft, inadequate storage, lack of physical security, or “Acts of God.”

**9. PAYMENT**

- a. Payment will be made in accordance with FAR 52.216-7, “Allowable Cost and Payment,” which is incorporated by reference, except as otherwise provided in this clause below. For purpose of these Terms and Conditions and this Payment clause, the term “Contractor” means “Seller,” the term “Contracting Officer” means “Buyer’s Authorized Procurement Representative,” the term “Government” means “Buyer,” and the “Disputes Clause” means the Disputes clause of these Terms and Conditions. For purposes of final indirect cost rate determinations in paragraph (d), the terms “cognizant Federal Agency official” and “appropriate Government representative” maintain their original meaning. Subparagraphs (a)(2), (b)(4) and (d)(4) and paragraph (f) are deleted. In subparagraph (h)(2)(ii)(B), the term “6 years” is deleted and replaced with the term “5 years, 9 months.” The blank in paragraph (a)(3) is filled-in with the word “30th” unless otherwise specified in the Order.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- b. Each invoice shall include Buyer's Order number. Payment due date and cash discount period are calculated from the date of Buyer's receipt of an accurate invoice or Buyer's acceptance of the Work and supporting documentation, whichever occurs last. Payment is deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered in United States dollars. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.
- c. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer against any amount payable by Buyer to Seller.
- d. Material shall be furnished by Seller except as specifically provided in the Order. Material purchased to support the Order shall be billed at actual costs without overhead, general and administrative costs, cost of money or profit, as evidenced by paid invoices. Material withdrawn from Seller's stores shall be charged as cost determined in accordance with generally accepted accounting practices. Unless otherwise noted, handling charges are included in the labor rates established in the Order. Buyer shall be credited all cast or trade discounts, rebates, allowances (whether or not taken) and the value of any resulting scrap.
- e. Overtime shall mean those hours worked in excess of forty (40) hours during Seller's standard workweek. All such overtime must have prior written approval of Buyer's Authorized Procurement Representative.
- f. If Work is performed on Buyer's premises, Buyer shall not be obligated to make any payments to Seller for days designated by Buyer as holidays or shutdown periods, except for Work specifically authorized in writing by Buyer's Authorized Procurement Representative and performed by Seller on such days.

**10. RESERVED**

**11. TARIFF – BENEFITS PASS-THROUGH**

- a. Vendor Credits. Supplier is required to use commercially reasonable efforts to obtain any and all credits, rebates, discounts, or other reimbursements (collectively, "Vendor Credits") resulting from any costs incurred and invoiced under this Agreement. Buyer is entitled to all Vendor Credits resulting from work delivered under this Agreement. The Supplier agrees to promptly pay or credit to the Buyer any Vendor Credits that the Supplier receives from its own suppliers, vendors or other agencies related to the goods or services provided under this Agreement.
- b. Notification and Payment. The Supplier shall provide written notice to the Buyer within thirty (30) days of receiving any Vendor Credit. The Supplier will pay the full amount of the Vendor Credit to the Buyer within sixty (60) days of its receipt, either by direct payment or by a credit memo applied against the next outstanding invoice due from the Buyer.
- c. Audit Rights. During the term of this Agreement and for a period of six (6) years thereafter, the Supplier shall maintain accurate and complete records pertaining to all related Vendor Credits received. The Buyer, or its designated representative, shall have the right to inspect and audit such records to ensure compliance with this clause.
- d. Remedies for Non-compliance. In the event the Supplier fails to pass through any Vendor Credit as required by this clause, the Buyer may, in addition to any other remedies available, deduct the amount of the Vendor Credit, plus interest at the rate of 1.5% per month, from any amounts otherwise due to the Supplier.

**12. DEFECTIVE COST OR PRICING DATA**

This Defective Cost and Pricing Data clause shall apply to the Order, unless an exemption contained in FAR 15.403-1(b) is applicable to Seller and the Order or if the Customer's end user customer is not the Government or unless an exemption contained in FAR 15.403-1(b) is applicable to Seller and the Order. If Seller or its subcontractors or prospective subcontractors are subject to the requirements of FAR 52.215 and if Seller or such subcontractors fail to submit accurate, complete and current cost or pricing data, and, as a result of that failure, the Government Customer reduces the price of Buyer's Prime Contract, pursuant to FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" or FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data – Modifications," or any other provisions of the Prime Contract under which the Order is issued, Buyer may recover from Seller an amount equal to the price reduction of the Prime Contract. If, as a result of Seller's or its subcontractor's foregoing conduct, a Government Customer imposes a penalty on or charges Buyer interest, Buyer may recover from Seller the amount of that interest or penalty. Seller will not raise as defenses the matters listed in FAR 52.215-10(c) (1) (AUG 2011) or FAR 52.215-11(d)(1) (JUN 2020).

### **13. INSPECTION, QUALITY CONTROL AND CAPABILITY**

- a. Buyer, and Buyer's Government Customer, shall be permitted, at no additional cost and upon reasonable notice and at reasonable times and places, to inspect, review and evaluate Seller's applicable information, facilities, plants, and Work, including before shipment and during and after manufacturing and performance in order to review, evaluate and assess quality, progress and performance in accordance with and pursuant to the Order. Seller and its lower-tier subcontractors shall provide Buyer, and Buyer's Government Customer, such access to their applicable facilities and assistance to enable Buyer, and Buyer's Government Customer, to safely and conveniently perform such inspections, tests, reviews, evaluations, or such other activities, as Buyer and its Customer require to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order. Seller shall flow such inspection, test, review, and evaluation rights to its subcontractors and suppliers to allow Buyer and its Government Customer the same inspection rights for Seller's subcontractors and suppliers.
- b. Whether or not these inspections, tests, reviews, evaluations, or such other activities, are performed by Buyer, Seller shall not be relieved from its responsibility to perform all activities and take all measures as are necessary to comply with its obligations and the requirements of the Order.
- c. Seller shall have and maintain a quality management system acceptable to Buyer and that meets industry recognized quality standards and complies with the quality clauses or requirements specified in the Order. Seller shall permit Buyer, its Government Customer, and regulatory authorities to have access to its facilities and information during reasonable times and upon reasonable notice to Seller. During such access, Buyer, its Government Customer, and regulatory authorities shall be permitted to conduct reviews of Seller's procedures, practices, processes and related documents to determine Seller's compliance with the quality management system that was accepted by the Buyer. Seller shall keep and maintain current and complete records of all Seller reviews, inspections, testing, or other surveillance of its quality management system. Seller shall not substitute materials, parts, components, subcomponents, items, tooling, processes or accessories, even if Seller believes they are of superior quality without prior written consent from Buyers Authorized Procurement Representative. Such quality records and other documents shall be made available to Buyer promptly upon request. Seller shall insert the substance of this Inspection, Quality and Capability clause, including this sentence, in its subcontractors' contracts.
- d. Seller shall have a continuing obligation to notify Buyer immediately of any known or reasonably suspected violation of or deviation from Seller's quality management system and to promptly advise Buyer of the quantity and specific identity of any Work delivered to Buyer that may be affected.
- e. Any Work which fails to meet the Order requirements may be rejected by Buyer in accordance with the Acceptance or Rejection of Work clause contained herein. If delivered to Buyer's destination, rejected Work shall be removed promptly by Seller at Seller's expense.

### **14. ACCEPTANCE OR REJECTION OF WORK**

- a. Within a reasonable time after the date of delivery of Work to Buyer, Buyer shall have the right to inspect and test the Work to assess, in Buyer's reasonable opinion, whether the delivered Work meets the obligations and requirements of the Order. Notwithstanding the foregoing sentence, no payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance will relieve Seller of any obligations under the Order or impair any rights or remedies of Buyer, including revocation of acceptance.
- b. If Seller delivers defective or non-conforming Work without prior written approval from Buyers Authorized Procurement Representative, Buyer may, at its option:
  - (i) reject all or a portion of the Work and require Seller to promptly correct, reperform or replace all or a portion of the defective or non-confirming Work;
  - (ii) accept all or part of the defective or non-confirming Work at an equitable price reduction or credit against any amounts owed to Seller; or
  - (iii) if Seller is unwilling, unable or incapable of promptly correcting, reperforming or replacing the defects or non-conformances, Buyer shall have the option to: (x) repair or modify the Work or have a third party repair or modify the Work, to comply with the Order requirements and obligations, at Seller's expense (y) obtain replacement Work from another source and Seller shall be responsible for such expenses and costs or (z) terminate the Order in whole or in part, without penalty to Buyer.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- c. Return to Seller of defective or non-conforming Work and redelivery to Buyer of corrected or replaced Work shall be at Seller's expense. Seller shall not redeliver corrected or rejected Work without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken.
- d. The Buyer's rights contained in this Acceptance or Rejection of Work clause is in addition to and shall not in any way impact or replace Buyer's rights as set forth in the Warranty clause contained herein.

**15. WARRANTY**

- a. Seller warrants that all Goods delivered or furnished in connection with the Order will, for a one (1) year period after acceptance of Goods by Buyer:
  - (i) be new,
  - (ii) be free from defects in design, material, and workmanship,
  - (iii) conform to all requirements of the Order, including drawings, samples, or other description applicable under the Order, and
  - (iv) if ordered to specifications under the Order, conform to the specifications and be free of specification defects.

Seller further warrants that all Services shall be performed with the degree of professional skill, sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.

- b. The warranty will begin upon acceptance pursuant to the Acceptance or Rejection of Work clause and will survive inspection, test, and payment for the Work.
- c. If any Goods fail to comply in any respect to the warranties set forth in this Warranty clause, Seller shall, at Buyer's option, promptly repair or replace the Goods. Transportation of replacement Goods and return of defective or nonconforming Goods will be at Seller's expense. If repair, replacement, or correction of Goods is not timely, Buyer may elect to return, rework, replace, or re-procure the defective or nonconforming Goods, as Buyer deems applicable, at Seller's expense.
- d. If any Services fail to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly correct or re-perform the Services. If correction or re-performance of Services is not timely, Buyer may elect to correct, re-perform or re-procure the defective or nonconforming Services, as Buyer deems applicable, at Seller's expense.
- e. Work required to be repaired, corrected or replaced shall be subject to the requirements of the Order in the same manner and to the same extent as Work originally delivered under the Order. All statutory warranties will apply. Warranties will run to Buyer, its successors, assigns, and customers.

**16. COUNTERFEIT PARTS**

- a. "Counterfeit Parts" mean parts or separately identifiable items or components of Goods that:
  - (i) are an unauthorized copy or substitute of an Original Component Manufacturer or Original Equipment Manufacturer (collectively, "OCM/OEM") item;
  - (ii) are not traceable to an OCM/OEM sufficient to ensure authenticity in OCM/OEM design and manufacture;
  - (iii) do not contain proper external or internal materials or components required by the OCM/OEM or are not constructed in accordance with OCM/OEM design;
  - (iv) have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OCM/OEM design but not disclosed as such or are represented as OCM/OEM authentic or new; or
  - (v) have not passed successfully all OCM/OEM required testing, verification, screening, and quality control processes.
- b. Seller shall not deliver Counterfeit Parts or suspected Counterfeit Parts to Buyer under the Order. Counterfeit Parts are deemed nonconforming to the Order.
- c. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, will not be deemed Counterfeit Parts.
- d. Seller shall implement an appropriate strategy to ensure that Goods furnished to Buyer under the Order are not Counterfeit Parts. Seller's strategy will include the direct procurement of items from OCMs/OEMs, OCM/OEM authorized distributors/suppliers, and ability to provide clear unbroken chain of custody documentation to Buyer upon request.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- e. If product is not available directly through OCM/OEM authorized distribution (defined as the OCM/OEM and its authorized distributors only), Seller shall immediately notify Buyer. Seller may not pursue the order without express written authorization from Buyer to deviate from authorized distribution.
- f. If Seller becomes aware or suspects that it has furnished Counterfeit Parts to Buyer under the Order, Seller shall promptly notify Buyer in writing. At Seller's expense, and in no case later than thirty (30) days from discovery, Seller shall replace such Counterfeit Parts with OCM/OEM Goods that conform to the requirements of the Order. Seller shall be liable for all costs related to the replacement of Counterfeit Parts and any testing or validation necessitated by the installation of authentic Goods after Counterfeit Parts have been replaced.
- g. Seller bears responsibility for procuring authentic Goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Counterfeit Parts clause.

**17. DIMINISHING MANUFACTURING SOURCES**

- a. Seller shall immediately notify Buyer in writing with all necessary details as soon as Seller becomes aware of any Diminishing Manufacturing Sources and Material Shortage (DMSMS) issue regarding the Work including any of the following which are out of production, going out of production, no longer commercially available, whether supplied by Seller or by Seller's lower-tier subcontractor(s):
  - (iv) items, materials, parts, subcomponents, and/or components;
  - (v) electronics in equipment, assemblies, subassemblies, parts, components, or items delivered or to be delivered under the Order, and/or
  - (vi) repair services.
- b. Seller shall notify Buyer in writing with a "last time buy" (LTB) notice for such "end-of-life" items as soon as Seller is aware or at least twelve (12) months prior to their anticipated date of discontinuance or unavailability. To the extent practicable, Seller will continue to provide LTB or EOL notifications after the last delivery of Goods to Buyer. Seller shall specifically identify those items by name or title, part number(s), function, where used in the item, and the name and address of the manufacturer, if other than Seller. Seller shall take all reasonable steps to investigate an alternate, similar or replacement part.
- c. All notifications required from Seller to Buyer under this Diminishing Manufacturing Sources clause will be given in writing to Buyer's Authorized Procurement Representative and a copy will be sent, via email, to DL-AS-Obsolescence-Mgmt@ga.com.

**18. CHANGES**

- a. Buyer's Authorized Procurement Representative may, at any time, issue written directions to Seller requiring changes within the general scope of work being performed under the Order; including but not limited to, changes to:
  - (i) drawings, designs, and/or specifications, when Goods are being specifically manufactured for Buyer in accordance with the drawings, designs, and /or specifications;
  - (ii) description of Services to be performed;
  - (iii) time of performance of Services (*i.e.*, hours of the day, days of the week, etc.);
  - (iv) method of shipment, packaging, or packing;
  - (v) place of inspection, delivery or acceptance.

Seller shall proceed with all Work, including Work subject to change, and as directed by Buyer's Authorized Procurement Representative.

- b. If any such direction from Buyer results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be negotiated and the Order shall be modified in writing as agreed. Any claim by Seller for an adjustment under this Changes clause must be
  - (i) asserted in writing, and delivered to Buyer's Authorized Procurement Representative, within fifteen (15) calendar days from the date of receipt by Seller of the written notification of change from Buyer's Authorized Procurement Representative, and
  - (ii) a fully supported proposal delivered to Buyer within thirty (30) calendar days after Seller's receipt of Buyer's written change direction.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

Seller shall provide additional documentation as reasonably requested by Buyer to support the amount of Seller's claim for equitable adjustment to meet Buyer's Prime Contract requirements. Whether made pursuant to the Changes clause or by mutual agreement, changes shall not be binding upon Buyer until Buyer agrees in writing, as set forth in the Writings Required clause herein.

- c. The issuance of information, advice, approvals, assistance or instructions by Buyer's technical personnel or other representatives will be deemed expressions of personal opinions only and no such action shall be deemed to be a change under this Changes clause and will not be the basis for any equitable adjustment. Furthermore, such expressions of personal opinions will not constitute a modification or change to the Order.
- d. Failure to agree after negotiation to any equitable adjustment will be a dispute within the meaning of the Disputes clause herein and shall be resolved pursuant to the Disputes clause. Further, the Parties agree that neither the inability to negotiate an equitable adjustment pursuant to this Changes clause nor any other provision of this Changes clause shall excuse Seller in any way from proceeding without delay in the performance of the Work under the Order.

**19. RESERVED****20. WRITINGS REQUIRED; APPLICABLE LANGUAGE**

- a. No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order will bind either Party unless provided in writing. No oral statement of any person whatsoever will in any manner or degree modify or otherwise affect the terms of the Order. No extra charge of any kind or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing and signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.
- b. The Parties agree that the Order, as well as all contractual documents, correspondence, invoices, notice, and other documents, whether technical or non-technical in nature, will be used and delivered in American English. Any conversations and communications shall be in English. Measurements shall be employed in the unit of measure customarily used by Buyer in the United States of America, unless otherwise specified by Buyer in writing.

**21. RECORDS**

- a. Unless a longer period is specified in the Order or by law or regulation, Seller shall retain all records related to the Order for five (5) years from the date of final payment received by Seller.
- b. Records related to the Order will date back to the time the Order was issued, and will include, but are not limited to, financial, proposal, catalogs, price lists, invoices, and underlying data, and basis for cost estimates, procurement, specifications, production, inventory records, inspection, test, quality, shipping and export, certifications, and receipt records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.
- c. At no additional cost, Buyer shall have access to such records related to the Order, and any other records Seller is required to maintain under the Order, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit of any proprietary indirect cost data may be accomplished through the responsible Defense Contract Audit Agency (DCAA) representative, or a third-party auditor selected by mutual agreement from a nationally recognized firm of certified public accountants.

**22. STOP WORK ORDER**

- a. Buyer's Authorized Procurement Representative may, at any time, by written notice to Seller issue a Stop Work Order (SWO) requiring Seller to stop all or part of the Work called for by the Order for a period of one hundred twenty (120) days. Seller shall immediately comply with the SWO and take all reasonable steps to minimize incurring costs allocable to the Work covered by the SWO during the period of work stoppage. Seller shall continue any Work not directly covered by the SWO.
- b. Within one hundred twenty (120) days after the SWO is delivered to Seller, Buyer shall either:
  - (i) extend the SWO,
  - (ii) withdraw the SWO and direct Seller to resume the Work, either in full or in part, or
  - (iii) terminate the Work covered by the SWO and the Order, or part thereof, pursuant to the appropriate provision of the Order.
- c. Buyer and Seller shall negotiate an equitable adjustment in the price, performance, or delivery schedule if:

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- (i) the Order is not canceled or terminated;
- (ii) the SWO results in a change in Seller's cost of performance or ability to meet the Order delivery and/or performance schedule; and
- (iii) Seller submits a written claim for adjustment within thirty (30) days after the end of the period of work stoppage, provided; however, Seller shall not be entitled to any equitable adjustment for any SWO issued due to Seller's performance problems or default under the Order.

**23. TERMINATION / CANCELLATION**

- a. FAR 52.249-6, "Termination (Cost-Reimbursement) - Alternate IV" is incorporated by reference into this Termination/Cancellation clause except that for purposes of this clause 23: the term "Government" means "Buyer," the term "Contractor" means "Seller", the term "Contracting Officer" means "Buyer's Authorized Procurement Representative," the term "1 year" is deleted each place it occurs and replaced by the term "6 months," paragraphs (e) and (j) are deleted.:
- b. Subparagraph (a)(2) of FAR 52.249-6 is deleted in its entirety and replaced with the following:
  - “(a)(2) Buyer may terminate performance of Work under the Order in whole or, from time to time, in part,
    - (i) If Seller defaults in performing the Order and fails to cure the default within ten (10) days (unless extended by the Buyer) after receiving a notice specifying the default. "Default" includes failure to make progress in the Work so as to endanger performance of any or all of the requirements of the Order. Seller shall provide Buyer with a written detailed plan adequate to cure the failure. If such failure reasonably cannot be cured within such ten (10) days and the cure plan is unacceptable to Buyer's Authorized Procurement Representative, then Buyer may terminate in accordance with the cure notice; or
    - (ii) In the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors.”
- c. Subparagraph (b) of FAR 52.249-6 is deleted in its entirety and replaced with the following:
  - “(b) Buyer's Authorized Procurement Representative shall terminate or cancel the Order in accordance with paragraph (a) by delivering to Seller a "Notice of Termination" or "Notice of Cancellation" specifying whether termination or cancellation is pursuant to subparagraphs (a)(1), (a)(2), or (a)(3), the extent of the termination or cancellation, and the effective date. If, after cancellation under subparagraph (a)(2), it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance was due to causes beyond the control and without the fault or negligence of Seller as set forth in the Force Majeure clause, the rights and obligations of Parties will be the same as if the termination was for the convenience of Buyer.”
- d. As prescribed by of FAR 52.249-6, Alternate IV, subparagraphs (h) & (l) of the basic clauses are deleted in their entirety and replaced with the Alternate IV Subparagraphs (h) and (l).

**24. RESERVED**

**25. PROPRIETARY INFORMATION/CYBERSECURITY**

**Proprietary Information**

- a. Buyer and Seller shall each keep each other's information that is received solely in connection with the Order as confidential and protect it from unauthorized use and disclosure, whether intentional or inadvertent or otherwise, during the term of the Order, and for a period of twenty (20) years thereafter:
  - (i) confidential, proprietary and/or trade secret information disclosed solely in connection with the Order, whether disclosed orally or visually and identified as confidential or proprietary at the time the information was disclosed, or in writing, electronically or in other tangible form, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures;
  - (ii) tangible items and software containing, conveying, or embodying such information disclosed solely in connection with the Order; and
  - (iii) tooling for the Order that is obtained, directly or indirectly, from the other Party, including tooling of Buyer's Customer, disclosed solely in connection with the Order.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

The foregoing information described in (i), (ii) and (iii) collectively referred to as "Proprietary Information".

- b. Unless otherwise expressly stated in the Order or another clause of these Terms and Conditions, all Proprietary Information exchanged or disclosed under the Order shall be governed by this Proprietary Information/Cybersecurity clause, and such exchanges and disclosures made pursuant to this Proprietary Information/Cybersecurity clause shall supersede any prior agreement, documents or instruments between Buyer and Seller to protect such Proprietary Information that is exchanged or disclosed in support and performance of and pursuant to the Order.
- c. Seller shall only use Buyer's Proprietary Information for the purpose of the Order and in performing the obligations, providing support and meeting the requirements of Buyer's Prime Contract., and Seller shall comply with all proper proprietary markings and restrictive legends applied by Buyer. Seller shall maintain appropriate processes and systems to adequately protect Buyer's Proprietary Information provided hereunder. Seller may disclose Buyer's Proprietary Information to its subcontractors solely as required for the performance of the Order, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller pursuant to this Proprietary Information /Cybersecurity clause and under the Order. Seller shall be liable to Buyer for any breach of such obligation by its subcontractors.
- d. Seller agrees that any of its Proprietary Information that is technical data and computer software furnished to Buyer as a required deliverable under the Order will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR/DFARS or other Government agency supplement clauses incorporated in this Order ("Nonconforming Markings"). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within ten (10) business days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.
- e. If Buyer or Seller, as a receiving Party, is legally required by a court of competent jurisdiction or a Government entity to disclose any Proprietary Information of the other Party, as a disclosing Party, other than as set forth in this clause, it will give the disclosing Party prompt written notice of the request (if legally permissible), and use its best efforts to limit disclosure and to obtain confidential treatment or a protective order and allow, to the fullest extent possible, the disclosing Party to participate in the proceeding. If the receiving Party is nonetheless compelled to disclose any Proprietary Information, the receiving Party may disclose of disclosing Party's Proprietary Information solely to the minimal extent necessary to comply with the legal requirement.
- f. Buyer and Seller shall take all reasonable measures to protect each other's Proprietary Information, which measures shall be at least equal to those with which a Party uses to protect its own confidential or proprietary information, but in no event less than reasonable care.
- g. Seller agrees to retain in confidence and immediately return to Buyer on completion, termination or cancellation of the Order, all Buyer's Proprietary Information, including designs, drawings, specifications, and technical information of every kind furnished to Seller in connection with the Order, unless specifically directed otherwise in writing by Buyer.
- h. The obligations of this Proprietary Information/Cybersecurity clause will not apply to any Proprietary Information that a receiving Party can demonstrate,
  - (i) was in the receiving Party's rightful possession free of any obligation of confidence prior to its first receipt from disclosing Party,
  - (ii) is publicly known through no fault of the receiving Party (except that information will not be deemed to be publicly known simply because a portion thereof is embodied in a general disclosure or because individual features, components or combinations thereof are known to the public),
  - (iii) is obtained from a third person who had a right to disclose it, or
  - (iv) was independently developed without access to any Proprietary Information of the disclosing Party.
- i. Notwithstanding, the foregoing, nothing in this Proprietary Information /Cybersecurity clause is intended to affect the rights or exercise of rights, if any, obtained by the Government under DFARS 252.227-7013, "Rights in Technical Data" and DFARS 252.227-7014, "Rights in Computer Software," or any similar or successor clauses, or other clauses that may be contained in any contracts or subcontracts between Buyer and its Customer.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

j. The Parties' obligations associated with this Proprietary Information/Cybersecurity clause shall survive any expiration or termination of the Order, provided that a receiving Party shall have no further right to use or disclose any Proprietary Information of the disclosing Party.

**Cybersecurity**

a. Definitions.

“Adequate Security” means security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information received from, or pertaining to, Buyer. Adequate Security shall be determined by the Seller, but at a minimum shall include the cybersecurity requirements as documented in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171.

“Cyber Incident” means actions taken against an Information System that result in a compromise or an actual or potentially adverse effect on an Information System and/or the information residing therein.

“Information Systems” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. Seller's Information Systems includes all computers, servers, networks, electronic mobile devices, communications equipment, software, software as a service or other electronic device that is used by the Seller to store, process, analyze, receive, or transmit information related to its business interests with Buyer.

b. Seller agrees that it shall maintain Adequate Security on its Information Systems for the purpose of safeguarding information related to the business activities between Buyer and Seller.

c. System Security Plan; Plan of Action and Milestones.

(i) Upon the effective date of the Order, Seller shall have documented in a System Security Plan (SSP) its implementation of the cybersecurity requirements defined in the NIST SP 800-171 and, for any cybersecurity requirements that Seller has not yet implemented as of the date of the Order, Seller shall have documented such in an associated Plan of Action and Milestones (POAM) (see NIST SP 800-171, Section 3.12.2 for POAM information and requirements).

(ii) Seller shall have conducted a self-assessment of each of its Information Systems that will store, process, analyze, receive, or transmit information related to its business interests with Buyer in accordance with the published NIST SP 800-171 DoD Assessment Guide and shall have reported its self-assessed summary score to Buyer. If the summary score reported to Buyer is less than 110, Seller shall have delivered to Buyer the date Seller anticipates achieving a summary score of 110 as determined by their POAM.

(iii) Seller shall regularly and vigilantly monitor the cybersecurity threat landscape and shall adhere to cybersecurity best practices. Further, Seller shall remediate known cybersecurity vulnerabilities in its Information System as soon as practical.

d. Cyber Incident Reporting.

(i) If Seller discovers a Cyber Incident that affects Seller's Information System or the information residing therein, or that affects Seller's ability to perform to the requirements of the Order, Seller shall notify Buyer in writing within 72 hours after discovery of a Cyber Incident.

(ii) Further, Seller shall provide Buyer with written updates as they become available, for the duration of the remediation efforts, to include: date of the incident, status of remediation efforts, determination of whether Buyer's information was compromised, impact to outstanding orders, and anticipated time to recovery.

e. Subcontractors. Seller shall include the substance of this Cybersecurity subclause in its subcontracts supporting the Order, ensuring that such subcontractors supporting the Order shall meet the requirements as set forth in this Cybersecurity subclause, unless the subcontractor is providing exclusively Commercial Off-The-Shelf (COTS) Goods or Services.

**26. INTELLECTUAL PROPERTY**

a. Definitions:

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

“Intellectual Property” or “IP” means inventions, discoveries and improvements, know-how, technical data, copyrightable materials, copyrights, service marks, trademarks, trade names, drawings, specifications, process information, reports and documented information, computer software, software code, patents, industrial designs, trade secrets, mask work registrations, and other works of authorship and the like.

“Background IP” means all Intellectual Property (i) conceived, originated, created, or first reduced to practice by a Party prior to the period of performance of the Order or outside the scope of the Order, or (ii) that can be proven by clear evidence to have been conceived, originated, created or first reduced to practice by a Party after the effective date of the Order, independent of the Work and without use of or access to the other Party's Intellectual Property or Proprietary Information.

“Foreground IP” means Intellectual Property that is conceived, originated, created, or first reduced to practice by, for or with a Party either alone or with others in the performance of the Order.

- b. Background IP. Intellectual Property that is Seller’s Background IP is and will remain the Background IP of the Seller and Seller retains all right, title and interest thereto. Intellectual Property that is Buyer’s Background IP is and will remain the Background IP of Buyer and Buyer retains all right, title and interest thereto.

Seller hereby grants to Buyer a nonexclusive, transferable (to its Customer only), irrevocable, perpetual, fully paid-up, royalty-free, worldwide right and license to use, reproduce, execute, display, perform, modify, and prepare derivative works of Seller’s Background IP and to make, have made, offer for sale, sell, distribute, and import or export Goods and deliverables under the Order that incorporate or embody Seller’s Background IP, to the extent necessary for Buyer to make use of the Work performed or Goods and other deliverables under the Order, and to authorize others to do so, in performance of Buyer’s Prime Contract obligations with its Customer..

Seller grants to Buyer such license rights in the event Buyer terminates/cancels all or part of the Order for Seller’s default in accordance with the Termination /Cancellation clause of these Terms and Conditions.

- c. Foreground IP. If Foreground IP is paid for with Government funds, such Foreground IP will be the exclusive property of Seller (“Seller’s Foreground IP”). Notwithstanding the foregoing sentence, any Foreground IP solely derived from or based on use of or access to Buyer’s Intellectual Property by, for or with Seller either alone or with others in the performance of the Order will be considered Buyer’s Background IP and will be the exclusive property of the Buyer (“Buyer’s Derived Background IP”) and, for the avoidance of doubt, Seller hereby transfers, conveys, and assigns all right, title and interest in such Buyer Derived Background IP free of charge to Buyer.

Seller hereby grants to Buyer a nonexclusive, transferable (to Buyer’s Customer only), irrevocable, perpetual, fully paid-up, royalty-free, worldwide right and license to use, reproduce, execute, display, perform, modify, and prepare derivative works of Seller’s Foreground IP and to make, have made, offer for sale, sell, distribute, and import or export Goods and deliverables under the Order that incorporate or embody Seller’s Foreground IP, to the extent necessary for Buyer to make use of the Work performed or Goods and other deliverables under the Order, and to authorize others to do so, in performance of Buyer’s Prime Contract obligations with its Customer.

- d. All Buyer’s Background IP and Buyer’s Derived Background IP will remain the property of Buyer even if provided to Seller for its performance of or for the purpose of the Order.
- e. Seller shall, at Buyer’s election, defend Buyer, Buyer’s officers, affiliates, agents, employees, and customers (collectively, “Indemnitees”) from and against all suits, claims, or causes of action (collectively, “IP Claims”) and shall indemnify and hold harmless all Indemnitees from and against any and all losses, damages, liabilities, costs, fees, and expenses, including attorney’s fees and other costs, fees, and expenses of litigation/settlement, judgments, liens, court costs, appeals, and awards (collectively, “Losses”) for any alleged, asserted or actual IP Claims based on intellectual property rights, including for trademark, copyright, or patent infringement, misappropriation or wrongful use of information or documents, whether actual, asserted or alleged, or otherwise violates the Intellectual Property rights of a third party arising out of or resulting from the manufacture, use, reproduction, sale or distribution of any Work performed, furnished or delivered to Buyer under the Order. If an injunction is obtained against Buyer due to or resulting from a IP Claim pursuant to this Intellectual Property clause, Seller shall either
- (i) procure for Buyer and its customer the right to continue using the Work or
  - (ii) replace or modify the Work so it becomes non-infringing.

This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of the Order except with regard to allowable insurance costs.

## **27. ADVERTISING, USE OF NAME**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the Work provided for in the Order. Seller shall require that its subcontractors at any tier adhere to this same policy and shall be responsible for any breach of such obligation by any of its subcontractors. Seller agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each instance.

## **28. CONFLICT OF INTEREST**

- a. During the term and performance of the Order:
  - (i) Seller shall exercise reasonable care and diligence to prevent any action or condition which could result in the appearance of, or an actual, conflict of interest with those of Buyer. This obligation shall include the activities of the employees or agents of Seller and its family members in their interactions with the employees of Buyer and its family members, or Buyer's customer representatives, vendors, or subcontractors.
  - (ii) If Seller identifies an actual or potential organizational conflict of interest, Seller shall immediately make full disclosure in writing to the Buyer.
  - (iii) Seller agrees to not enter into contracts with the Government either as a prime or as a subcontractor that will give rise to an organizational conflict of interest as a result of Seller's performance of work under the Order.
- b. Seller warrants that Seller's performance of Work under the Order for a Government Customer will not give rise to an organizational conflict of interest, as defined in FAR subpart 9.5 and DFARS Subpart 209.5.
- c. A breach of this clause will authorize Buyer to terminate the Order for default in Buyer's sole discretion.

## **29. INSURANCE AND PRECAUTIONS**

- a. Insurance: Seller shall procure and maintain during the term of the Order, and at its expense, insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:
  - (i) Automobile liability insurance coverage for all owned, non-owned and hired vehicles protecting the Seller from automobile bodily injury and property damage with limits of at least \$1,000,000 occurrence.
  - (ii) Commercial general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 general.
  - (iii) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances, including employer's liability coverage for injury, disease, and death, with coverage limits of not less than \$1,000,000 per accident and employee.
  - (iv) Insurance against any loss or damage of any Property in which Buyer, its supplier or Customer has or acquires an interest hereunder and such insurance coverage will be provided for the benefit of Buyer, on an all-risk basis and value will be at replacement cost. Upon request by Buyer, Seller shall provide Buyer with adequate proof of such insurance against such loss or damage.

For (a)(ii) above, such policies will name Buyer as additional insured when requested by Buyer.

- b. Certificates of Insurance: Upon Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller. The Seller shall provide an endorsement on each policy in (a) above providing that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or cancellation of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.
- c. Self-Assumption: Any self-insured retention, deductibles, and exclusions in coverage in the policies required under this Insurance and Precautions clause will be assumed by, for the account of and at the sole risk of Seller or its subcontractor which provides the insurance and, to the extent applicable, will be paid by Seller or its subcontractor. In no event will the liability of Seller or any of its subcontractors thereof be limited to the extent of any of the minimum limits of insurance required herein.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- d. Protection of Property: If Seller's work under the Order involves operations by Seller on Buyer's or its Customer's premises, Seller agrees to comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's Customer, and take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all fines, penalties, or loss incurred by reason of failure to comply with this Insurance and Precautions clause.

**30. INDEMNIFICATION**

- a. Seller shall defend Buyer, Buyer's officers, affiliates, agents, contract labor, consultants employees, and customers (collectively, "Indemnitees") from and against all suits, claims, or causes of action (collectively, "Claims") and shall indemnify and hold harmless all Indemnitees from and against any and all losses, damages, liabilities, costs, fees and expenses, including attorney's fees and cost of litigation/settlement, judgments, liens, court costs, appeals, and awards (collectively, "Losses") for:
- (i) any breach of representations, certifications, and warranty of Seller hereunder, and
  - (ii) Losses of any kind and nature whatsoever incurred by Buyer or any third party for property damage, personal injury, or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof), as a result of, arising out of or in any way related to any act or omission of the Seller's officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of Sellers obligations under the Order.
- b. Buyer shall notify Seller in writing of such Claims and Buyer shall provide Seller with reasonably necessary information and assistance, at Seller's expense, for the defense thereof.

**31. TAXES**

- a. Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order or transaction.
- b. Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this Taxes clause as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.
- c. Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this Taxes clause when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

**32. SUBCONTRACTING**

Seller shall notify Buyer before subcontracting 70% or more of the Order. This is not a restriction on authorized distributors, dealers, wholesaler, or industrial suppliers; the purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this Subcontracting clause. Seller shall require that its subcontractors adhere to this same requirement. Seller shall include, in each lower-tier subcontract, the appropriate flow down clauses as required by the Prime Contract, including FAR and DFARS for Government Customers.

**33. FORCE MAJEURE**

- a. Neither Party shall be responsible for its failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to any cause, event or circumstance that is not foreseeable and is beyond the control and without the fault or negligence of the Party affected and which by exercise of reasonable diligence of the Party affected, such cause, event or circumstance prevents a Party from performing its obligations under the Order. Such causes, events or circumstances include, but are not limited to
- (i) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, terrorism, quarantine restrictions, freight embargoes, or unusually severe weather affecting either party; or
  - (ii) similar causes, events or circumstances beyond the affected Party's control and which are not foreseeable.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- b. The Party whose performance is so affected shall notify the other Party in writing within ten (10) days after the beginning of any such causes, events, or circumstances. In all cases, the Parties shall use reasonable efforts to avoid or minimize all such failures or delay in performing their obligations hereunder, including exercising work-around plans or obtaining the Work from other sources.

**34. COMPLIANCE WITH LAWS**

- a. Seller agrees that in performing its duties under the Order, Seller shall comply with all applicable Federal, State, foreign and local laws, statutes, ordinances, and regulations in effect on the date of the Order, including, but not limited to:
  - (i) any applicable Federal Acquisition Regulation (FAR) and/or Defense FAR Supplements (e.g., DFARS) (or other Agency-specific) flow-down from any Government Prime Contract(s) that may be awarded to Buyer subsequent to award of the Order; and
  - (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- b. Seller represents and warrants that neither Seller nor any of its principals, consultants, subcontractors, shareholders, directors, officers, employees, or agents has performed or will perform any act which would constitute a violation of the requirements set forth in this clause 34.a. If at any time Seller becomes aware of information or circumstances that suggest this representation and warranty may not be accurate, it shall notify Buyer immediately in writing, but not more than seven (7) calendar days after becoming aware of such circumstances.

**35. EXPORT CONTROLS**

- a. Information exchanged pursuant to the Order may include/involve the use/provision of, or access to, Technical Data/Technology or Defense Services defined and subject to export controls pursuant to 22 Code of Federal Regulations 120 – 130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 730 -774 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as “Export Regulations”). U.S. Law prohibits the transfer or provision of Technical Data/Technology or Defense Services without an export authorization to any employee or other person who is not a U.S. person, as well as to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States.
- b. In relation to the Order, each Party shall comply with all Export Regulations and the equivalent regulations of the government of any country in which the Party conducts business pursuant to the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining such), Seller shall immediately notify Buyer’s Authorized Procurement Representative.
- c. Each Party shall provide all information reasonably requested by the other Party for compliance with the Export Regulations and equivalent regulations in relation to the Order, including, but not limited to trade control classifications, end-user/end use certificates and certificates of origin. Each Party covenants that all such information shall be true, complete, and correct (to the best of the Party’s knowledge and belief at the time) and shall provide the other Party with prompt written notice if any such information is no longer true, complete, or correct.
- d. Each Party shall indemnify and save harmless the other Party from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney fees, arising out of claims, suit, allegations, or charges of a Party’s failure to comply with all applicable Export Regulations and equivalent regulations in relation to the Order. Any failure of a Party to comply with the provisions of this Export Controls clause may be deemed a material breach of the Order by the other Party. Each Party acknowledges that it will be responsible for ensuring that all applicable Government export control requirements are conveyed to all its sub-tier suppliers or subcontractors that will be provided or may have access to Technical Data/Technology or Defense Services supplied by the other Party under the Order.

**36. INDUSTRIAL PARTICIPATION OBLIGATIONS**

- a. Notwithstanding that the Order may or may not be issued in direct support of a foreign sale, Seller agrees to support Buyer’s Industrial Participation Obligations. “Industrial Participation Obligations” means the past, present, and future industrial

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

participation, co-production and offset obligations or any similar obligations that Buyer undertakes, in order to market or sell its Work, and to meet other customer country national objectives.

- b. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates, or its designees may use the value of the Order to satisfy Industrial Participation Obligations that Buyer may have with Seller's country. Seller shall provide documentation or information, which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or Industrial Participation Obligations credits.
- c. Seller agrees to identify and retain for Buyer's use any Industrial Participation Obligations credits generated from the content of Work, which Seller either produces itself and/or procures from suppliers for work arising out of or related to the Order. Promptly after selection of a non-U.S. supplier for Work under the Order, Seller shall notify Buyer of the name, address, supplier point of contact (including telephone number) and dollar value of the subcontract. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates, or its designees may use the value of such credits to satisfy Industrial Participation Obligations that Buyer may have.
- d. Buyer reserves the right to assign Industrial Participation Obligation credits generated through Seller's efforts under the Order to third parties.
- e. Seller shall include the substance of this Industrial Participation Obligations clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

**37. COMMUNICATIONS**

- a. Except as required by law, Buyer shall be solely responsible for all liaison and coordination with its Government Customer, as it affects the Prime Contract, the Order, and any other related contract. Notwithstanding the foregoing, Seller may, in the normal course of business, communicate with the cognizant DCMA and DCAA liaison as required by federal acquisition regulations and directives. Seller shall immediately notify Buyer of any such communication and include a brief summary of the points discussed as related to the Order.
- b. Notwithstanding subsection a in this clause 37, nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of a Government Customer in regard to data, tooling and other information that is owned by that Customer or that it has a right to use, including that Customer's right to authorize Seller's use of such data, tooling or other information in direct contracts between Seller and that Customer, or upon that Customer's instruction in accordance with applicable laws and regulations
- c. Seller shall not communicate with Buyer's Customer with respect to any dispute between Seller and Buyer.

**38. ASSIGNMENTS, CHANGES TO NAME AND PLACE OF MANUFACTURE**

- a. Seller will not assign or transfer the Order, including by operation of law, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer with documentation supporting any such assignment.
- b. Payment to an assignee of any claim hereunder will be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.
- c. Seller shall provide prior written notice to Buyer of any proposed name changes, mergers or acquisitions affecting the Order. Seller shall not change the location of manufacture of the Goods or performance of the Services to be provided to Buyer under the Order or the place of performance of any Work without first providing at least ninety (90) days written notice to Buyer prior to the date of initiation of the relocation activities and obtaining Buyer's prior written consent.

**39. DISPUTES**

- a. All disputes between Buyer and Seller, under the Order will be submitted in writing for resolution through mutual agreement to ascending levels of management of the respective Parties. If the Parties' ascending levels of management are unable, after good faith efforts, to settle the dispute within sixty (60) calendar days after the dispute is submitted in writing, or such later date as the Buyer and the Seller may have agreed in writing, either Party may submit the dispute to a court of competent jurisdiction. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES TO WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.** Notwithstanding the above, either Party may seek injunctive or other equitable relief, at any time, in any court of competent jurisdiction.

**TC-05 Terms and Conditions for Time & Materials and Labor Hour, U.S. Government Orders – GOODS & SERVICES (WORK)**

- b. Seller shall not acquire any direct claim or direct course of action against the Government without the Government contracting officer's written consent.
- c. Pending final resolution of any dispute, Seller shall proceed with performance under the Order unless otherwise instructed by Buyer. The rights and obligations of this clause shall survive completion of and final payment under the Order.

**40. APPLICABLE LAWS**

- a. The Order and any dispute arising hereunder will be governed by the laws of the state of California, without regard to its conflicts of law's provisions; except that any provision in the Order that is:
  - (i) incorporated directly from or by express reference to the FAR or FAR supplements, or
  - (ii) contract provisions that have been flowed down from a Prime Contract with the Government, will 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.

Jurisdiction and venue will lie in the State of California.

- b. The 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply to any sales transactions governed by these terms and conditions.

**41. NON-WAIVER**

The failure of either Party to insist, in one or more instances upon performance or to exercise any rights will not waive or relinquish to any extent such Party's right to assert or rely upon any such terms or rights on any future occasion.

**42. ENTIRE AGREEMENT**

- a. These terms and conditions, along with any full text FAR or FAR Agency supplement clauses, and those referenced on the face of the Order to which this form is attached, including other specifications or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller, and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral, between the Parties related to the subject matter of the Order.
- b. No course of prior dealings between the Buyer or Seller, and no usage of trade, will be relevant to supplement or explain any term used in the Order.
- c. No agreement or understanding varying or extending the Terms or Conditions of the Order will be binding unless executed in writing by Buyer's Authorized Procurement Representative.
- d. If any provision of the Order is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of the provisions in the Order will remain valid, enforceable and in full force and effect, and the Parties will negotiate in good faith to substitute a provision of like economic intent and effect.

**43. SURVIVABILITY**

Seller's obligations that, by their very nature, must survive expiration, termination, or completion of the Order, shall survive expiration, termination, or completion of the Order, including, but not limited to, obligations under the following: Applicable Laws, Diminishing Manufacturing Sources, Disputes, Export Controls, Indemnification, Intellectual Property, Proprietary Information/Cybersecurity, Records, Warranty, and Government Customer flow-down provisions that, by their nature, should survive.