

**GENERAL PROVISIONS AND FAR/DFARS FLOW DOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS
FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT**

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INTRODUCTORY NOTE:

For purposes of these General Provisions, "Buyer" shall mean the specific entity issuing this Contract -- Sierracin/Sylmar Corporation, PRC-DeSoto International, Inc. or PPG Industries, Inc.

SECTION I: GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by Buyer and have no effect unless accepted in writing by Buyer.**

2. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the laws of the State from which this Contract was issued, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of

contracts appeals, and quasi-judicial agencies of the federal Government.

- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.
- (2) If: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in (3) below.
- (3) Upon the occurrence of any of the circumstances identified in (2) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.
- (4) In the event it is determined that the Work is not a Commercial Item as defined at FAR 2.101, then SELLER agrees that the General Provisions And FAR/DFARS Flow down Provisions For Subcontracts/Purchase Orders (All Agencies) For Non-Commercial Items Under A U.S. Government Prime Contract (Form No. AEROUS003), as well

as any additional mandatory or necessary agency flow downs, shall be applicable to this Contract, in lieu of these terms and conditions, effective as of the date of this Contract.

- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) SELLER shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its state approved counterpart.

3. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by Buyer. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against SELLER. Buyer shall have the right to make settlements and/or adjustments in price without notice to the assignee.

4. CHANGES

- (a) The Buyer's Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Buyer shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to Buyer within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. COMMUNICATION WITH BUYER'S CUSTOMER

Buyer shall be solely responsible for all liaison and coordination with the Buyer customer, including the U. S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.

6. CONTRACT DIRECTION

- (a) Only the Buyer's Procurement Representative has authority to amend this Contract. Such amendments must be in writing.

- (b) Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the Buyer's Procurement Representative.

7. DEFAULT

- (a) Buyer, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) Buyer shall not be liable for any Work not accepted; however, Buyer may require SELLER to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. Buyer and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under paragraph (a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

8. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation.
- (c) "DFARS" means the Defense Federal Acquisition Regulation Supplement
- (d) "Buyer" means Buyer, acting through its companies or business sites as identified on the face of this Contract. If a subsidiary or affiliate of Buyer is identified on the face of the Contract then "Buyer" means that subsidiary or affiliate.
- (e) "Buyer's Procurement Representative" means the person authorized by Buyer's cognizant procurement organization to administer and/or execute this Contract.
- (f) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."
- (g) "SELLER" means the Party identified on the face of the Contract with whom Buyer is contracting.

- (h) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

9. **DISPUTES**

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by Buyer.

10. **EXPORT CONTROL**

- (a) The Parties acknowledge that they, as well as the products, services, and technology ("Items") sold or otherwise transferred under this Contract, may be subject to U.S. and other export controls, embargoes, sanctions and similar laws, regulations and requirements ("Export Controls"), as well as PPG's export policies, controls, and procedures ("PPG's Export Compliance Requirements") as communicated to SELLER in writing during the course of our business relationship.
- (b) SELLER agrees to (1) comply with Export Controls; and (2) provide Buyer with all information and documentation deemed necessary by Buyer in order for Buyer to comply with all Export Controls as they relate to this business transaction.
- (c) SELLER shall report to Buyer's Chief Compliance Officer ("CCO") any suspected or actual violations of any Export Controls that involve items or employees of PPG or its subsidiaries ("Reports"), to the extent such reporting is legally permitted in SELLER's country. SELLER may also report any suspected or actual violations of Buyer's Global Code of Ethics ("Code"), especially the portion of the Code related to export compliance. With respect to any such Reports, SELLER may use one of the following three options to notify PPG of a suspected or actual violation: (1) Buyer's confidential, anonymous "Hotline"; (2) PPG's online reporting system; or (3) direct email to Chief Compliance Officer@ppg.com. Information on all three options is available at www.ppg.com. Both the Hotline and online reporting system are reviewed by Buyer's CCO. It is against Buyer's policy to retaliate against anyone for making a good faith report of a violation of the law, Buyer's export compliance policies, or PPG's Code. Buyer is committed to maintaining the confidentiality and anonymity of such reports.
- (d) Should SELLER fail to comply with the foregoing requirements, PPG reserves the right to take appropriate action, including terminating this business relationship. In addition, and notwithstanding any other provision of this Contract, SELLER agrees to indemnify, defend, and hold harmless Buyer, its officers, employees, agents, and representatives, from and against any and all claims, demands, suits, causes of action, expenses (including reasonable attorneys' fees), damages, losses or liabilities of any nature whatsoever, arising from, or allegedly arising from or related to, SELLER's failure to adhere to Export Controls, Buyer's Export Compliance Requirements as communicated to SELLER in writing by Buyer during the course of our business relationship, or this Contract.
- (e) The provisions of this Export Compliance section of the Contract are in addition to any other provisions of the Contract related to compliance with any laws or regulations. To the extent that this section of the Contract is inconsistent with any other provision of the Contract, the Parties agree that the provisions of this section supersede any such inconsistent provision.

The Parties further agree that the obligations under this section survive the termination of this Contract.

11. **EXTRAS**

Work shall not be supplied in excess of quantities specified in the Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

12. **FURNISHED PROPERTY**

- (a) Buyer may provide to SELLER property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in Buyer or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At Buyer's request, and/or upon completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.
- (e) The Government Property clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government Furnished Property, or property to which the Government takes title under this Contract.

13. **GRATUITIES/KICKBACKS**

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of Buyer with a view toward securing favorable treatment as a supplier.
- (b) **By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of the Anti-Kickback Act of 1986 (41 USC 51-58).**

14. **INDEPENDENT CONTRACTOR RELATIONSHIP**

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to Buyer.
- (b) SELLER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

15. **INFORMATION OF BUYER**

Information provided by Buyer to SELLER remains the property of Buyer. SELLER agrees to comply with the terms of any Proprietary Information Agreement with Buyer and to comply with all Proprietary Information markings and Restrictive Legends applied by Buyer to anything provided hereunder to SELLER. **SELLER agrees not to use any Buyer provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Buyer.**

16. INFORMATION OF SELLER

SELLER shall not provide any Proprietary Information to Buyer without prior execution by Buyer of a Proprietary Information Agreement.

17. INSPECTION AND ACCEPTANCE

- (a) Buyer and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. Buyer's final inspection and acceptance shall be at destination.
- (c) If SELLER delivers non-conforming Work, Buyer may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

18. INSURANCE/ENTRY ON BUYER'S PROPERTY

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Contract then SELLER and its subcontractors shall procure and maintain worker's compensation (in a minimum amount consistent with applicable law), comprehensive general liability (minimum \$1 million), automotive liability (minimum \$1 million), bodily injury and property damage insurance (in reasonable amounts), and such other insurance as Buyer may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors. SELLER shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name Buyer as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier.

19. INTELLECTUAL PROPERTY INFRINGEMENT

SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work

performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

20. INTELLECTUAL PROPERTY

- (a) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- (b) With regard to any modifications that SELLER makes to any Work in the performance of this Contract, Buyer and the Government shall have a nonexclusive, irrevocable, worldwide license and right under any intellectual property right obtained to cover such modifications to make, have made, use, sell, copy, distribute, make derivative works or compilations, display publicly, or perform publicly such modifications.

21. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, MATERIAL REQUIREMENTS (AUG 2000), not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

22. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Buyer. SELLER agrees to cooperate with Buyer in the fulfillment of any foreign offset/countertrade obligations.

23. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer's Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be FOB Destination.

24. PARTS OBSOLESCENCE

Buyer may desire to place additional orders for items purchased hereunder. SELLER shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

25. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of the following: (i) Buyer's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. Buyer shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.

- (b) Payment shall be deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

26. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special Provisions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Statement of Work. With respect to a conflict between Sections I and II of these General Provisions, the FAR and DFARS clauses of Section II shall take precedence and nothing in this Section I shall alter or modify the applicable compliance obligations set forth in Section II.

27. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

28. QUALITY CONTROL SYSTEM

- (a) SELLER shall maintain a quality system that complies with ISO 9000 standards or equivalent.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to Buyer and its customers for a period of ten (10) years.
- (c) Each shipment of Material shall be accompanied by an accurate certificate of analysis or other mutually agreeable quality control data, when required. SELLER acknowledges that BUYER, in reliance upon SELLER'S warranties hereunder, will use the Material without first analyzing or inspecting it.
- (d) SELLER shall not change the composition, suppliers, manufacturing location, or process used to produce the Material from that present when the Material was originally approved by BUYER, without BUYER'S prior written consent.
- (e) Any container holding the Material when the Material is delivered to Buyer will be labeled with the net weight of the Material contained therein, and that the actual weight of the Material contained in any container shall not deviate from the weight shown on the container's label by more than one percent (1%) if the labeled net weight is sixty (60) pounds or less, or by more than one-half of one percent (0.5%) if the labeled weight is greater than sixty (60) pounds.
- (f) The SELLER shall flow down all BUYER's quality related requirements and key product characteristics, if any, to its sub-tier suppliers.

29. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to

this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of Buyer.

30. STOP WORK ORDER

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

31. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

32. SURVIVABILITY

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- (a) Applicable Laws
Export Control
Independent Contractor Relationship
Information of Buyer
Insurance/Entry on Buyer Property
Intellectual Property
Release of Information
Warranty
- (b) Those U.S. Government flow down provisions that by their nature should survive.

33. TERMINATION FOR CONVENIENCE

- (a) For specially performed Work: Buyer may terminate part or all of this Contract for its convenience by giving written notice to SELLER. Buyer's only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of Buyer, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- (b) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) For other than specially performed Work: Buyer may terminate part or all of this Contract for its convenience by giving written notice to SELLER and Buyer's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.
- (d) In either case, SELLER shall continue all Work not terminated.

34. TIMELY PERFORMANCE

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by Buyer, Buyer may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify Buyer, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by Buyer.

35. **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by Buyer to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Buyer thereafter to enforce each and every such provision(s).
- (b) Buyer's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of Buyer in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

36. **WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or twelve (12) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, Buyer may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to Buyer and its customer(s). **Any implied warranty of merchantability and fitness for a particular purpose for Work performed by Buyer or any specifications, drawings, samples or descriptions provided by Buyer is hereby disclaimed.**

SECTION II: FAR/DFARS FLOW DOWN PROVISIONS

A. **INCORPORATION OF FAR CLAUSES**

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. As set forth above, the clauses of this Section II shall take precedence over any conflicting terms or obligations set forth in Section I. Nothing

in Section I shall alter or modify the applicable compliance obligations set forth in Section II.

B. **GOVERNMENT SUBCONTRACT**

This Contract is entered into by the Parties in support of a U.S. Government contract.

As used in the clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this contract.
3. "CONTRACTOR" means the SELLER, as defined in this PURCHASE 3, acting as the immediate (first tier) subcontractor to Buyer.
4. "Prime Contract" means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a prime contract with the U.S. Government.
5. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. **NOTES**

1. Substitute "Buyer" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "Buyer's Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and Buyer" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or Buyer" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through Buyer.

D. **AMENDMENTS REQUIRED BY PRIME CONTRACT**

CONTRACTOR agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable Prime contract or with the provisions of amendments to such Prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. **PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR's use of such Furnished Items in support of other U. S. Government prime contracts.

F. **FAR/DFARS FLOW DOWN CLAUSES**

REFERENCE TITLE

1. **The following FAR/DFARS clauses apply to this Contract:**

- (a) 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)
- (b) 52.212-5(d) COMPTROLLER GENERAL EXAMINATION OF RECORDS (JUN 2016)
- (c) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (See Note 2.)
- (d) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (See Note 2.)
- (e) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)
- (f) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- (g) 52.222-26 EQUAL OPPORTUNITY (APR 2015)
- (h) 52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015)
- (i) 52.222-55 MINIMUM WAGES UNDER EO 13658 (DEC 2015)
- (j) 52.225-1 BUY AMERICAN ACT – SUPPLIES (MAY 2014)
- (k) 52.225-5 TRADE AGREEMENTS ACT (FEB 2016)
- (l) 52.225-13 RESTRICTION ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- (m) 52.233-3 PROTEST AFTER AWARD (AUG 1996)
- (n) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (JUN 2016)
- (o) 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015)
- (p) 252.223-7008 PROHIBITION OF HEXVALENT CHROMIUM (JUN 2013) (See Note 2.)
- (q) 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)
- (r) 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (See Notes 3 and 4.)

2. **The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$15,000:**

- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)

3. **The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$35,000:**

- (a) 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED

OR PROPOSED FOR DEBARMENT (OCT 2015) (See Notes 1 and 2.)

4. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$150,000:**

- (a) 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VIETNAM ERA VETERANS (OCT 2015)
- (b) 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
- (c) 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

5. **The following DFARS clause applies to this Contract if the value of the Contract equals or exceeds \$500,000:**

- (a) 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004). (Applicable if Work is for a DOD agency.)

6. **The following FAR/DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$700,000:**

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015) (Applicable if the CONTRACTOR is not a small business. See Note 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.)
- (b) 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) – BASIC (MAR 2016) (Applicable if CONTRACTOR is not a small business and the Work is for a DOD agency.)

7. **The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$5,000,000 and has a performance period of more than 120 days:**

- (a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (Note: All violations of the Civil False Claims Act or criminal law shall be reported to the cognizant agency Office of Inspector General, with a copy to the Contracting Officer.)

8. **The following FAR/DFARS clauses apply as indicated:**

- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work involves access to classified information. Delete paragraph (c) of the clause.)
- (b) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applicable to Work containing covered radioactive material. In the blank insert "30". See Notes 1 and 2.)
- (c) 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)

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- (d) 52.225-9 BUY AMERICAN -- CONSTRUCTION MATERIALS (MAY 2014) (Applicable if the Work contains construction materials.)
- (e) 52.245-1 GOVERNMENT PROPERTY (APR 2012) (Applicable if Government property is furnished in the performance of the Contract. Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. See Note 2. The following is added as paragraph (n) "CONTRACTOR shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system.")
- (f) 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUNE 2010) (Applicable if the Contract is funded using Recovery Act funds.)
- (g) 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applicable if services are being provided as part of Contract performance and value of Contract exceeds \$3,500.)
- (h) 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applicable if lower tier subcontractors are small business concerns. See Note 1.)
- (i) 52.247-64 PREFERENCE FOR PRIVATELY OWNED UNITED STATES-FLAG COMMERCIAL VESSELS (FEB 2006) (Applicable if the Contract involves ocean transportation of supplies subject to the Cargo Preference Act.)
- (j) 252.211-7003 ITEM UNIQUE IDENTIFICATION AND EVALUATION (MAR 2016) (Applicable if Contract requires unique item identification.)
- (k) 252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAMS -- BASIC (AUG 2016) (Applicable if the prime contract is a DOD contract subject to the BAA.)
- (l) 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (OCT 2014) (Applicable if Contract exceeds \$3,500 and is for purchase of products containing specialty metals.)
- (m) 252.225-7012 PREFERENCE FOR DOMESTIC COMMODITIES (AUG 2016)
- (n) 252.225-7021 TRADE AGREEMENTS -- BASIC (AUG 2016) (Applicable if the prime contract is a DOD contract subject to the TAA.)

G. CERTIFICATIONS AND REPRESENTATIONS

1. **This clause contains certifications and representations that are material representations of fact upon which Buyer will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any Contract, CONTRACTOR**

certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by Buyer. CONTRACTOR shall immediately notify Buyer of any change of status with regard to these certifications and representations.

2. The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, contract, agreement, or subcontract. In each clause incorporated below, substitute "Buyer" for "Government" and "Contracting Agency" and "Buyer's Procurement Representative" for "Contracting Officer" throughout.
 - (a) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**
 - (1) CONTRACTOR certifies that, to the best of its knowledge and belief, that
 - (a) CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (b) CONTRACTOR and/or any of its Principals have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - (c) CONTRACTOR and/or any of its Principals are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated above; and
 - (d) CONTRACTOR and/or any of its principals have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.
 - (2) CONTRACTOR shall provide immediate written notice to Buyer if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- (3) The certification in paragraph (1) of this provision is a material representation of fact upon which reliance was placed when making Contract award. If it is later determined that CONTRACTOR knowingly rendered an erroneous certification, in addition to other available remedies, Buyer may terminate the Contract for default.

FAR 52.222-22 Previous Contracts and Compliance Reports.

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26): (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by its proposed subcontractors, will be obtained before subcontract awards. If it has not filed all required compliance reports, CONTRACTOR shall notify the Buyer's Procurement Officer in writing.

- (b) **FAR 52.222-25 Affirmative Action Compliance.** CONTRACTOR represents that (1) CONTRACTOR has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.