

Appendix A-EB/NNS-NSSN (REV. 1/99)

1. CLAUSES INCORPORATED BY

REFERENCE OR IN FULL TEXT

- (1) The terms and conditions of this Purchase Order incorporate one or more clauses by reference, with the same force and effect as if they were given in full text.
- (2) In the FAR and DFARS clauses incorporated in this order by reference *or in full text*, unless otherwise stated, the terms "Government" and "Contracting Officer" shall mean "Buyer, the term "contractor" shall mean "Seller," the term "subcontractor" shall mean "Seller's subcontractors", and the term "contract" shall mean this order, when it can be so reasonably interpreted, and it is not obvious that the words refer to Buyer's prime contract or Contractor or Government or Contracting Officer or Seller itself.
- (3) Copies of the FAR and DFARS may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. They may also be found at: <http://farsite.hill.af.mil>

2. ENTIRE AGREEMENT

- (a) This Order, including all documents incorporated by reference, constitutes the entire contract.
- (b) The parties shall not be bound by any other statements or understandings except as noted in paragraph (c) below.
- (c) Changes are not binding on Buyer, unless they are in writing and authorized by a representative of Buyer's Materials Management (EB) or Sourcing (NNS) Department. Refer to the applicable "Changes" clause in Sections II or III. However, in addition to a Purchase Order Supplement, a properly signed and authorized Vendor Information Request (VIR) has the authority to modify technical/contractual requirements but does not have the authority to authorize any change in the Purchase Order pricing.
- (d) Different terms in Seller's acknowledgment shall not bind Buyer despite lack of objection or protest thereof by Buyer.

3. DEFINITIONS

- (a) "Seller," means the addressee of this Purchase Order as the party with whom this contract is made.
- (b) "Buyer," means the company placing this order. Where reference is made to "Buyer" in an active sense, the reference is to an authorized representative of the company placing this order.
- (c) "Supplies," means the material, articles, services or other items ordered by this Purchase Order, whether specially manufactured or not.
- (d) "Federal," or "Government," means the "United States of America."
- (e) "State," means the province, department or political subdivision of the Nation in which Seller is performing the work called for by this Order.
- (f) "Contracting Officer," when not changed to Buyer, means any person (Government employee or member of the Armed Forces) properly designated as a Contracting Officer by any agency of the Government.
- (g) "Prime Contract," means the contract between Electric Boat Corporation and the Government
- (h) "Prime Subcontract," means the subcontract between Electric Boat Corporation and Newport News Shipbuilding.
- (i) "Contract," "Purchase Order," and "Subcontract," used herein are interchangeable, and denote this Purchase Order.

4. ORDER OF PRECEDENCE (for purchase orders issued by Newport News Shipbuilding)

In the event of any inconsistency in this Purchase Order, the inconsistency shall be resolved by giving precedence in the following order:

- (a) the Purchase Order;
- (b) the Conditions of Purchase;
- (c) Duly authorized Vendor Information Requests (VIRs);
- (d) the Specifications;
- (e) the Drawings; and
- (f) the other documents incorporated by reference.

The plans and specifications are intended to explain each other and anything contained in one shall be deemed to be contained in both. If any discrepancy, differences or conflict exist between any of the above documents and the plans and specifications or between the plans and specifications; the same shall immediately be brought to the

attention of the Buyer, in writing, and Seller shall not proceed except at its own risk. [Note: For purchase orders issued by Electric Boat, the order of precedence differs in that VIRs are listed before the conditions of purchase.]

5. ACCEPTANCE

Acceptance of the offer represented by this Purchase Order is expressly limited to the terms hereof, and should be accomplished by signing the acknowledgment copy of this Purchase Order, if requested, and returning same to Buyer. A written acknowledgment from Seller or, in any event, performance or delivery in whole or in part shall constitute acceptance of this Purchase Order. **Different terms in Seller's acknowledgment shall not bind Buyer despite lack of objection or protest thereof by Buyer.**

6. SEVERABILITY

If any phrase, clause, sentence, or paragraph, or combination of same contravenes the applicable laws of the United States or of any state or jurisdiction, such phrase, clause, sentence, or paragraph, or combination of same shall be inoperative in such jurisdiction and the remainder of the order shall remain binding on the parties hereto.

7. NON-WAIVER

No waiver by Buyer of any breach on the part of the Seller of any of its obligations herein contained shall constitute a waiver of any subsequent breach of the same or any other of such obligations, and no payment made hereunder shall be deemed to constitute an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer's right to reject the same later.

Buyer's failure to insist on Seller's strict performance of this Order at any time shall not be construed as a waiver by Buyer for performance in the future.

8. GOVERNING LAW

This order shall be construed in accordance with and be governed by the federal law of government contracts (as found in appropriate federal statutes, regulations, and decisions by the U. S. Federal Courts and Federal Boards of Contract Appeals) except to the extent such government contract law does not cover an issue in dispute arising hereunder, in which event such issue shall be construed in accordance with and be governed by the laws of the State of New York, U. S. A. without regard to the principles of conflicts of law.

9. LAWS, REGULATIONS AND PERMITS

Seller represents, warrants and certifies by its commencement with work on this Purchase Order that in performance of work hereunder, Seller agrees to comply with all applicable laws, rules, regulations and ordinances of the United States and of any State, territory, and political subdivision in which the work under this Order is performed.

Seller shall procure all necessary permits or licenses required for performance of the work hereunder, and the cost of such permits or licenses is deemed to be included in the Order price therein stated.

Seller shall also require its subcontractors to comply with this requirement.

Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense, including attorney's fees, incurred by Buyer resulting from violation by Seller or its lower-tier subcontractors of any federal, state, or local law or regulation.

9.A. DEBARMENT AND/OR SUSPENSION

Seller represents and warrants that, as of the time of award of the Purchase Order, neither Seller nor any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

10. TAXES

Seller shall pay all applicable foreign or domestic taxes, assessments or duties assessed against Seller for the materials, supplies, equipment or services covered by this purchase order prior to delivery to Buyer or performance thereof.

However, Buyer shall be liable as an additional charge for any applicable sales or use tax. Seller shall, when required by local law, collect and remit the sales tax on Buyer's behalf to the appropriate authority and shall reflect the tax so paid by Seller on its invoice to Buyer.

Except: If this order is issued by Newport News Shipbuilding (NNS), any applicable Virginia sales or use tax will be paid by NNS directly to the state under direct payment permit no. 998000-8.

The purchase order line item identifies those items which are exempt from sales tax. Upon request, Buyer will provide to Seller an exemption or resale certificate.

11. RELATIONSHIP OF THE PARTIES

The relationship of the parties is that of independent contractors. Each party is and shall continue to be an independent entity.

Nothing in any contract resulting from this order is intended to create, nor shall be construed to create, a partnership, joint venture, teaming arrangement or teaming agreement, or agency relationship between the parties. In addition, except as specifically described herein, neither party hereto, nor any of their respective officers, members, or employees shall be deemed to be the agent, employee, or representative of the other party.

Neither party shall have the implied or express right or authority to assume or to create any obligation on behalf of, or in the name of, the other party through its acts, omissions, or representations.

12. RESERVED

13. RESERVED

14. NAVSEA 5252.227-9112, LOGISTIC

SUPPORT REQUIREMENT (NOV 1996) (MODIFIED)

(a) This clause applies whenever the order specifications, by reference to a Military Specification or otherwise, specify repair parts or stock components (hereinafter called "repair parts") for a ship component or item of equipment.

(b) With respect to ship components or equipments manufactured other than in the United States or Canada, the Seller agrees that, in addition to any other data required by this Purchase Order, it will furnish under this Purchase Order sufficient data so that the repair parts can be reproduced in the United States or Canada unless the suppliers of the ship components or equipments shall have made arrangements satisfactory to the Seller and approved by the Buyer for the manufacturing of repair parts in the United States or Canada. For the purpose of this requirement, "sufficient data" shall mean detail drawings and other technical information sufficiently extensive in detail to show design, construction, dimensions, and operation or function, manufacturing methods or processes, treatment or chemical composition of materials, plant layout and tooling. All data shall be in the English language and according to the United States system of weights and measures, and drawings for components, assemblies, subassemblies and parts protected by US. patents shall contain a prominent notation to that effect fully identifying the patent or patents involved, and bearing the number of this Purchase Order.

(c) In order to satisfy the requirements of paragraph (b), above, unless the supplier of the ship components or equipments shall have made arrangements, satisfactory to the Seller and approved by the Buyer, for the manufacture of such repair parts in the United States or Canada, the Seller shall include in all subcontracts for the purchase of ship components or equipments from foreign sources a clause, acceptable to the Contacting Officer, granting to the United States Government for a period of seven (7) years, "Government Purpose License Rights" (GPLR) (as defined in paragraph (a)(12) of the clause of this contract entitled "RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS" (DFARS 252.227-7013) in all technical data necessary to manufacture spare and repair parts for such components or equipments.

15. NOTICE OF DELAYS AND LABOR DISPUTES

A. If the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give notice, including all relevant information, to Buyer.

B. This data shall be informational only. It is not to be construed as a waiver by Buyer of any delivery schedule or date or of rights or remedies available at law or by this order.

16. FAR 52.242-13, BANKRUPTCY

(JUL 1995) (MODIFIED)

In the event the Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Seller agrees to furnish by certified mail, written notification of the bankruptcy to the Buyer responsible for administering the Purchase Order. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of purchase order numbers for all purchase orders and letter contracts against which final payment has not been made. This obligation remains in effect until final payment under this purchase order.

17. NOTIFICATION OF OWNERSHIP CHANGES

(a) The Seller shall make the following notifications in writing:

(1) When the Seller becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in changes in the valuation of its capitalized assets in the accounting records, the Seller shall notify the Buyer within 30 days.

(2) The Seller shall also notify the Buyer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Seller shall: (1) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide the Buyer or the government ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Seller's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Seller ownership change.

(c) The Seller shall include the substance of this clause in all subcontracts under this contract.

18. DELIVERY DATE

(a) Since time is of the essence hereof, Seller will commence and prosecute the work on this order with due diligence and dispatch and make any deliveries as specified.

(b) If this order calls, in whole or in part, for Seller to provide material, supplies or goods to Buyer, the following is applicable to that part.

Delivery by or on behalf of the Seller is to be made in strict compliance with the delivery schedule contained in this order. The delivery date as shown in this order is to be construed as the date of arrival at the receiving area of the delivery location specified in this order.

Seller shall provide notice to Buyer of actual or potential impacts to delivery.

If Seller fails to make delivery promptly and regularly in accordance with the delivery schedule as required thereunder, Seller agrees that, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller within the meaning of the clauses hereof entitled "Default" or "Termination...", Buyer may, in addition to other remedies available at law, terminate this order by giving written notice to Seller.

Unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller within the meaning of the clauses hereof entitled "Default" or

"Termination...", if Seller fails to meet its scheduled delivery dates and Buyer elects to call for expedited shipments, seller agrees to make the expedited shipment and to pay the difference between the method of shipping specified in the order and the actual expedited shipping charges incurred.

Early delivery is acceptable only if authorized by Buyer.

Seller shall be responsible for any additional charges resulting from deviation from Buyer's routing instructions.

(c) If this order calls, in whole or in part, for Seller to provide services and/or other deliverables (such as software, test reports, other reports or documentation, etc.), the following applies to that part.

Seller agrees to proceed diligently with the performance of services or work under this order and to provide any deliverables required in accordance with schedules specified in this order.

Unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller within the meaning of the clauses hereof entitled "Default" or "Termination...", if Seller fails to meet the delivery schedules specified in the order, Seller agrees that Buyer may, in addition to other remedies available at law, terminate this order by giving written notice to Seller.

19. RESERVED

20. SHIPPING REQUIREMENTS

In addition to any shipping instructions provided elsewhere in this purchase order, all shipments to Buyer shall be accompanied by a packing list stating as a minimum the number of this Purchase Order, the kind of supplies, Seller's name, shipper and shipping route. Buyer's count will be conclusive on all shipments not accompanied by packing list. All items, or their containers, shipped by, or on behalf of Seller, shall be tagged or marked with the number of this Purchase Order.

If this Purchase Order involves imported supplies, your attention is directed to the clauses 117 through 150 of these terms and conditions.

20.A. NEWPORT NEWS STANDARD SHIPPING INSTRUCTIONS

(This clause applies to NNS Purchase Orders Only.)

SHIPPING. Unless otherwise provided in the Purchase Order, Seller shall show the NNS Purchase Order and ship material to: Newport News, Shipbuilding & Dry Dock Company Main Receiving Dock, 39th street & Warwick Blvd., Newport News, VA 23607 Purchase Order No. _____. Seller shall clearly mark each shipping package, container label and all shipping documents with the Purchase Order number, the item number, the Newport News Part number, and the release number, if applicable. For container labels, Seller shall provide the following additional information: Shipper's name and address; Consignee Name; number of packages; gross and net weight and number of pieces per carton. When furnished with the shipment, Seller shall enclose all required documents and data in the first box of the shipment and mark, CERTIFICATES AND/OR TEST REPORTS ENCLOSED.

PROHIBITION OF YELLOW WRAPPINGS OR PROTECTION DEVICES. SELLER SHALL NOT USE YELLOW WRAPPING MATERIAL OR ATTACHED YELLOW PROTECTION DEVICES SUCH AS CAPS OR PLUGS.

FREIGHT CHARGES. When Purchaser will pay freight charges, Seller shall, except for UPS shipments, ship on a freight collect basis. UPS shipments will be shipped prepaid by Seller. Purchaser will not accept C.O. D. shipments unless expressly provided for in the Purchase Order.

DOMESTIC BARGE SHIPMENTS. Seller shall notify the Traffic Section of Purchaser at 1-800-426-1910 at least 30 calendar days prior to shipment by domestic barge.

HEAVY MATERIAL. Seller shall mark DELIVER IN OPEN TRAILER when shipping single articles that exceed 4000 pounds that do not adapt to safe unloading with a standard forklift truck.

PACKING AND CRATING. Seller shall, when practicable, ship in small packages or loose pieces for unloading by a standard 4000 pound forklift truck. Unless otherwise provided in the Purchase Order, Seller's price includes all charges or packing and crating.

VALUE DECLARATION: Seller shall not insure for excess value via any mode of transportation. For shipments at Purchaser's risk in which freight rates are based on released value Seller shall declare the lowest value on the bill of lading. For shipments at Purchaser's risk via UPS, domestic air freight, air freight forwarder, and Parcel Post, Seller shall insert the notation NVD (no value declared).

LOSS OR DAMAGES OF GOODS. Unless otherwise specified in the Purchase Order, risk of loss or damage to the goods furnished by Seller under this Purchase Order shall remain with the Seller until delivery to the Purchaser at the address specified in this Purchase Order.

21. LIENS

Seller agrees that all material, supplies, or goods delivered; equipment furnished; and labor performed under this purchase order shall be free of all liens, claims, charges and encumbrances, legal or equitable. Seller also agrees that it will, upon request by Buyer, furnish the Buyer formal written releases.

In addition, Seller agrees that if any such lien, claim, charge or encumbrance is not immediately discharged, the Buyer may discharge the same or cause the same to be discharged, at the expense of the Seller, including Buyer's costs and reasonable attorney's fees.

22. PAYMENT

When the term "Net ____" (days) or "N/____" days is used on the face of the Order, it shall mean that payments are to be mailed by Buyer within the number of days specified from the date an acceptable invoice is received by Buyer or from the date all the invoiced supplies are received by Buyer, whichever is later.

Invoices for payment shall be supported by such documents in such form as Buyer may reasonably request and shall bear such certifications as may be required by law,

regulations or this Order. Except as otherwise expressly provided on the face of this Order, all payments are contingent on acceptance of the supplies or services by Buyer. Unless otherwise agreed by Buyer in writing, Seller shall issue separate invoices for each shipment against this order which shall show the amount of materials shipped. Buyer's Order number, part number and name of factory shall appear on all invoices, packages, crates or boxes, bills of lading, express receipts, correspondence and other instruments in connection with this Order. Government Inspection forms, affidavits, etc., shall be mailed to Buyer by Seller on the date of shipment, or in the case of services, upon completion. Bills of lading, chemical and physical test reports if required, shall be mailed to Buyer by Seller not later than the day after shipment is made, or in the case of services, on the day after completion. Invoices shall be mailed within ten (10) days after shipment. All containers, drums, carboys, etc., to be returned, shall be shipped on a no-charge or consignment basis unless otherwise specified in this Order. Buyer shall pay for only such containers as it does not return within a reasonable time.

If required by Buyer prior to final payment hereunder, Seller will furnish to Buyer a release discharging Buyer and the Government from any liabilities, obligations and claims arising under this Order.

23. ASSIGNMENTS, SUBCONTRACT APPROVAL, AND SUBCONTRACTING

(a) The Seller may not assign this purchase order or any or all of its rights or obligations hereunder to any party (including, but not limited to, a subsidiary or other entity affiliated with the Seller) without the prior written consent of the Buyer.

The Seller shall provide the Buyer with a minimum of 10 (ten) days prior written notice of any such intended assignment.

(b) Buyer may assign its rights, including the exercise of any option(s) for the purchase of additional supplies, and delegate its duties under this Order to the Government or any other shipyard or agent designated by the Government at any time, and in the event of acceptance thereof by the Government or its Designee, Seller agrees to look solely to the Government or its Designee for payment.

(c) Seller agrees to obtain Buyer's written approval before subcontracting the entire Order.

(d) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR). NOTE: This FAR reference is to the version of FAR in effect prior to changes made by FAC 97-02 effective 1/1/98.

(e) Seller, or its subcontractors, shall obtain Buyer's written consent prior to placing any subcontract which contains air circuit breakers for switchboards. (Refer also to Clauses 23.C. and 139.)

(f) RESTRICTION ON ACQUISITION OF ITEMS OF FACILITIES - Seller may not direct charge the fabrication, purchase, rental, installation, or other acquisition of any item of facilities (as defined in FAR 45.101 and 45.301) to this purchase order unless Seller has obtained Buyer's prior written consent.

(g) Seller shall provide advance notification to Buyer of the prospective award of any subcontract under this purchase order which is expected to equal or exceed either \$500,000 or 50% of the value of this order.

23.A. FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

(a) Definitions.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

23.B. DFARS 252.244-7000, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (FEB 1997)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under the contract:

252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

23.C. SPECIAL AGREEMENT REGARDING SWITCHBOARD SUBCONTRACTS (NAVSEA) (MODIFIED)

(a) The Government has an interest in maintaining a competitive market for switchboards to be used on U.S. Naval vessels. The requirements of 10 U.S.C. 2507 result in a major component of certain switchboards (i.e. air circuit breakers) being available from a single domestic source who is also a competitor for such switchboards. Therefore,

the Contractor shall evaluate subcontract proposals for such switchboards exclusive of air circuit breaker content or on some other basis that ensures an equitable switchboard competition.

(b) Refer also to clause 23, Assignments, Subcontract Approval and Subcontracting.

(c) Refer also to clause 139 of these terms and conditions (DFARS 252.225-7029, Preference for United States or Canadian Air Circuit Breakers).

24. SET-OFF

Buyer shall be entitled at all times to set off any amounts owing from Seller to Buyer against any amount due or owing to Seller with respect to this Order.

25. BUYER FURNISHED TOOLING AND

MATERIAL

If Buyer furnishes or pays for tooling or material Seller agrees:

(a) that all dies, tools, jigs, fixtures, designs, drawings, patterns, and any other property or special items, which the Buyer specifically pays for or which are furnished by Buyer without charge, shall be and remain the property of Buyer or the Government; that they shall be subject to removal upon Buyer's instructions; that Seller shall be responsible for all loss or damage thereto, reasonable wear excepted, until they are delivered to Buyer; and that same shall be (a) appropriately segregated, marked as the property of Buyer and in the absence of specific instructions from Buyer to the contrary, numbered with the part made, in order to accurately identify same at all times, (b) kept in good working condition, and (c) used exclusively for the production of goods for Buyer and subjected to no other use except with the written permission of Buyer.

(b) that all material furnished by Buyer without charge hereunder shall likewise be and remain the property of Buyer; that Seller shall be responsible for all loss or damage including manufacturing errors thereto, reasonable wear excepted, until such material is delivered to Buyer; and that such material received from Buyer for the performance of this Order shall be properly segregated and marked; and upon completion, cancellation or termination of this Order, all such material, tools, etc., shall be held free of charge for six months by Seller pending instructions from Buyer; and in the absence of such instructions within the six (6) months, Seller shall be entitled after ten (10) days notice in writing to Buyer, to store same at Buyer's expense.

(c) Seller shall be entitled to retain all cutting and processing waste such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings and remnants. Seller shall make proper credit allowances for the scrap value of such waste in determining the price of this order. All spoiled partially manufactured materials, parts, and assemblies including those damaged in handling shall remain as Buyer-furnished material and shall be held by Seller for disposition by Buyer.

(d) The cost of transportation of Buyer-furnished material to the location of the Seller shall be paid by Buyer.

(e) If Seller is furnished or acquires Government-owned property for use in connection with this order, (1) Seller shall comply with the provisions of FAR Subpart 45.5 and (2) such Government property shall be governed by the applicable Government Property clause in Section II or Section III of these terms and conditions.

25.A. DFARS 252.245-7001, REPORTS OF GOVERNMENT PROPERTY (MAY 1994) (MODIFIED)

- This Purchase Order is a subcontract under a Cost-Reimbursement type U.S. Government prime contract.
- For fixed-price type purchase orders, this clause is applicable to special tooling and special test equipment.
- For other than fixed-price type purchase orders, this clause is applicable to all material, tooling, and special test equipment.

(a) The Seller shall provide an annual report to Buyer--

(1) For all DoD property for which the Seller is accountable under this purchase order;

(2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form;

(b) The Seller is responsible for reporting all Government property accountable to this purchase order, including that at subcontractor and alternate locations.

26. DISPUTES

(a) Disputes arising out of, or relating to, the performance of this purchase order or letter contract shall be resolved at the lowest practicable level. If a dispute arises, the designated representatives of the Buyer and Seller will attempt to resolve the dispute. If Buyer's and Seller's representatives cannot resolve the dispute, they will refer the matter in dispute to the appropriate level of their respective managements. If the Buyer and Seller cannot then resolve the dispute, each party reserves all its rights and remedies available at law.

(b) Pending the resolution of any dispute, Seller shall proceed diligently with the performance of this order.

27. RESERVED

28. RESERVED

29. RESERVED

30. RESERVED

31. RESERVED

32. INSURANCE & INDEMNIFICATION - WORK ON BUYER'S OR OTHER'S PREMISES

(a) If Seller's work under the Purchase Order involves operations by Seller on the Buyer's or other parties premises, Seller shall take all necessary precautions and such additional precautions as Buyer may prescribe, to prevent the occurrence of any injury to persons or damage to property during the progress of such work. In the event any work under the Purchase Order is performed on premises not owned or controlled by Seller, it shall be deemed to be "WORK ON BUYER'S PREMISES" within the meaning of this Article.

(b) Seller shall indemnify Buyer against all claims, lawsuits, judgments, settlements, liability, damage or loss (including expenses and attorney's fees) which may result in any way or arise from any act, or omission on the part of the Seller, its agents, employees, or subcontractors, except to the extent that such liability, damage or loss is due to the gross or willful negligence of Buyer.

(c) Seller shall maintain such General & Automobile Liability, and Workers' Compensation and Employer's Liability insurance as will protect Buyer, from any claims under any applicable Workers' Compensation and Occupational Disease Act. The applicable Buyer, Electric Boat Corporation or Newport News Shipbuilding, shall be added as an additional insured on the General and Automobile Liability policies of the Seller. Such policies should include a severability or cross liability provision.

(d) Certified copies of said policies or certificates evidencing such insurance shall be filed with Buyer. All insurance policies shall be issued by companies authorized to do business under the laws of the State(s) in which such work shall be performed and shall be in form, and limits as follows:

- General Liability - \$1,000,000 Each

Occurrence.

- Automobile Liability (Only required if automobile is authorized for use

on Buyer's property) - \$1,000,000 Combined Single Limit.

- Workers' Compensation - Statutory -

Endorsed for Employer's Liability in the

amount of \$500,000 and Federal Longshore (United States Longshore

and Harbor Workers' Compensation

Act) coverage if work is to be performed

in connection with the construction

or repair of a vessel and/or over the water.

- Buyer must be named as an additional insured on the General Liability and Automobile Liability Policies. Workers' Compensation policy shall include a waiver of subrogation in favor of the Buyer.

- Certificates must include a description of Operations or Services to be performed and Expiration Date of Insurance coverages.

- Buyer must be notified within 30 days of any policy changes or cancellations. Notification must be in writing. Seller shall have a copy of the Certificate signed in blue ink mailed to the attention of the Risk Manager of the applicable Buyer, Electric Boat Corporation or Newport News Shipbuilding, at the respective address as follows:

Risk Manager

Electric Boat Corporation

75 Eastern Point Road

Groton, CT 06340

Risk Manager

Newport News Shipbuilding

4101 Washington Avenue

Newport News, VA 23607-2770

An additional copy of the Certificate shall be sent to the attention of the Buyer's purchasing representative noted on the Purchase Order.

Certificates should be filed with the Buyer's Risk Manager 10 days prior to the start of work.

NOTE: Failure to file the required certificate of insurance with Buyer as specified may result in access to Buyer's or other's premises being denied.

(e) Seller agrees that it or its agents, employees, or subcontractors will abide by all the current statutory, regulatory or Buyer rules and regulations governing security, safety, and prohibition of alcohol and drugs while on Buyer's premises. If this is a Newport News Shipbuilding (NNS) purchase order, this includes compliance with NNS' "Safety Sense Handbook for New Employees, Contractors, and Visitors."

In addition to other available remedies, Buyer (EB or NNS as applicable) may, without notice or an opportunity to cure, terminate this purchase order for violations of this paragraph (e) or Clause 33, or expel from Buyer's property/worksites any Seller employee or subcontractor found violating the provisions of this paragraph (e) or clause 33. Access by non-U.S. citizen's to Buyer's premises is prohibited unless approved in writing by Buyer.

(f) Your attention is directed to clause 33 in these Terms and Conditions entitled "Standards of Conduct for Visitors."

33. STANDARDS OF CONDUCT FOR

VISITORS

Seller agrees that it, its agents, employees, or subcontractors will abide by the following standards which are subject to periodic revision and shall insure that these standards are provided to the aforementioned prior to any visit to "Buyer's Premises" as identified in the clause entitled "Work on Buyer's Premises."

STANDARDS OF CONDUCT FOR VISITORS

VISITOR PASSES/BADGES

All visitors are required to possess and plainly display their assigned pass/badge on the upper, front side of their body. Passes must be returned when exiting the Facility.

The information contained on your Visitor Pass/Badge may NOT be modified or changed except by an authorized representative of the Security Department.

Visitors issued "ESCORT REQUIRED" passes must always be accompanied by their assigned escort.

Visitors issued "NO ESCORT REQUIRED" passes must stay within their assigned work area.

SHIPBOARD ACCESS is NOT authorized unless indicated on the reverse side of the Visitor Pass. Uncleared visitors must be under continuous escort while onboard.

MATERIAL PASSES

Material passes are required for the removal of hardware or software from the plant. If this is an EB order, the pass must be signed by an authorized representative of Electric Boat. NO classified material may be removed without going through Electric Boat's Classified Document Control Center, ext. 32328.

SAFETY EQUIPMENT

Hard hats, safety glasses, hearing protection, and other appropriate safety equipment must be worn in all posted areas.

RADIATION DOSIMETERS

Radiation Dosimeters must be worn when entering posted areas.

ELECTROSTATIC DISCHARGE BRIEFING

Visitors will comply with requirements of the Electrostatic Discharge Briefing, if this briefing is determined to be necessary by the visitor's Hosting Department.

PERSONAL CONDUCT

Violation of the following guidelines while on Buyer's property or onboard ships located on Buyer's property, may result in the revocation of visitor privileges:

1. Willful damage to, or unauthorized removal of, property belonging to Buyer, Buyer's employee or another visitor.
2. Disobedience or insubordination to persons in authority or failure to identify yourself upon request.
3. The possession or use of alcohol or narcotics or entering the plant under the influence of drugs or alcohol.
4. Possession of firearms, weapons, cameras, or sound recording devices.
5. Smoking at a time or place not authorized.
6. Willful violation or disregard of safety, traffic, or parking lot regulations.
7. Solicitation of employees for donations or membership in organizations, circulation of petitions, sale of tickets or merchandise, etc. without specific approval.
8. Entering Buyer's property without proper authorization or deliberately permitting another person to use your badge.

9. Gambling, lotteries, or any other games of chance.

10. Committing any acts of violence, fighting, or improper or immoral conduct

34. FAR 52.219-8, UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL

BUSINESS CONCERNS (OCT 1995)

(Applies if this Purchase Order is expected to offer further subcontracting opportunities.)

Incorporated into this order by reference.

35. FAR 52.219-9, SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1996) AND ALT II (MAR 1996) (MODIFIED)

(Applies if this Purchase Order exceeds \$500,000.)

A. This clause does not apply to small business concerns.

B. FAR 52.219-9 is incorporated into this order by reference as it set forth in full.

C. The apparent successful offeror, upon request by Buyer, shall submit and negotiate a subcontracting plan, where applicable, which shall be included in and made a part of the resultant order. The subcontracting plan shall be negotiated within the time specified by Buyer. Failure to submit and negotiate the subcontracting plan may make the offeror ineligible for award of an order.

D. Seller's subcontracting plan shall include the items required in FAR 52.219-9.

E. Seller shall submit Standard Form 294, Subcontracting Report for Individual Contracts and Standard Form 295, Summary Subcontract Report, in accordance with instructions provided on the forms.

F. The failure of Seller or its lower-tier subcontractor to comply in good faith with (1) the clause of this order entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" and/or (2) an approved plan required by this clause, shall be a material breach of the order.

Alternate II (MAR 1996). Substitute the following paragraph (c) for paragraph (c) of the basic FAR 52.219-9 clause.

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns with a separate part for the basic contract and separate parts for each option(if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

36. DFARS 252.219-7003, SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

(This clause supplements the FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan clause invoked elsewhere in these Terms and Conditions.)

Incorporated by reference into this order.

37. FAR 52.219-16, LIQUIDATED DAMAGE SUBCONTRACTING PLAN (OCT 1995) (MODIFIED TO READ AS FOLLOWS)

(Applicable if the clause entitled "52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" is applicable.)

Seller agrees that the Buyer may withhold or recover from Seller such sums as the Buyer's Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractor(s) under this clause.

Incorporated by reference, less paragraphs (d) and (e).

38. FAR 52.203-3, GRATUITIES

(APR 84)

Incorporated into this order by reference.

39. FAR 52.203-5, COVENANT AGAINST CONTINGENT FEES

(APR 84)

Incorporated into this order by reference.

40. FAR 52.203-6, RESTRICTIONS ON

SUBCONTRACTOR SALES TO THE

GOVERNMENT (JUL 95)

(Applies if this order exceeds \$100,000.)

Note: Further flowdown is required per paragraph (c).

Incorporated into this order by reference.

41. DFARS 252.203-7001, SPECIAL PROHIBITION ON EMPLOYMENT (NOV 1995)

(Applicable if this order exceeds the Simplified Acquisition Threshold at FAR 2.101 (Note: \$100K as of 9/12/97.)

Incorporated into this Order, less paragraph (g), by reference.

42. FAR 52.203-7, ANTI-KICKBACK

PROCEDURES (JUL 1995) (MODIFIED)

(Applies if this order exceeds \$100,000, including subparagraph (c)(5) but excepting subparagraph (c)(1). Further flowdown required.)

Incorporated into this order, by reference, as modified:

Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense, including, but not limited to, any amount withheld from Buyer's prime contract with the Government or subcontract of any tier, resulting from violation by Seller or its lower-tier subcontractors, of the Anti-Kickback Act of 1986 (41 USC 51-58).

42A. 52.203-8, CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

Incorporated into this order by reference.

43. FAR 52.203-10, PRICE OR FEE

ADJUSTMENTS FOR ILLEGAL OR

IMPROPER ACTIVITY (JAN 1997)

(MODIFIED)

Incorporated into this order, by reference, as modified below:

Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (including attorney's fees), resulting from violation by Seller or its lower-tier subcontractors, of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), also referred to as the Procurement Integrity Law, as implemented in the Federal Acquisition Regulation (FAR).

43A. REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD

(a) Seller agrees that Buyer may reduce or suspend further advance, partial or progress payments to the Seller upon a written determination that substantial evidence exists that the Seller's request for advance, partial, or progress payments is based on fraud. This clause is in addition to any other rights or remedies provided to the Buyer by law or under contract.

(b) Actions taken by the Buyer in accordance with this clause shall not constitute an excusable delay under the Default clause of this contract or otherwise relieve the Seller its obligations to perform under this purchase order.

44A. FAR 52.203-11, CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991) (MODIFIED)

(Applies if this order exceeds \$100,000.)

(a) The definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror or Seller by signing its offer or accepting this Purchase Order, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989, that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OME standard from LLL, Disclosure of Lobbying activities, to the Buyer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

44B. 52.203-12, LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(Applies if this order exceeds \$100,000.)

Incorporated into this order by reference.

45. FAR 52.204-2, SECURITY

REQUIREMENTS

(AUG 1996)

(Applies, excluding reference to the Changes clause of this Purchase Order, if this Order requires access to classified information.)

Incorporated into this order by reference.

46. RESERVED

47. RESERVED

48. RESERVED

49. FAR 52.211-5, NEW MATERIAL (MAY 1995)

Incorporated into this order by reference.

50. FAR 52.211-7, OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

Incorporated into this order by reference.

51. DFARS 252.208-7000, INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991)

(This article applies unless this purchase order is for items which contain no precious metals.)

Incorporated into this order by reference.

52. FAR 52.211-15, DEFENSE PRIORITY AND ALLOCATION

REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

53. FAR 52.227-1, AUTHORIZATION AND CONSENT (JUL 1995) AND ALT I (APR 1984)

Incorporated into this order by reference.

Paragraph (a) of ALT I is substituted for paragraph (a) of the basic clause.

54. FAR 52.234-1, INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (MODIFIED)

(a) Definitions. "Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Seller shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Buyer's Contracting Officer via Buyer.

(c) Upon the direction of the Buyer's Contracting Officer, the Seller shall test Title III industrial resources for qualification. The Seller shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Buyer's Contracting Officer modifies the Buyer's prime contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the prime contract for the costs of testing and qualification of the Title III industrial resource and the Buyer will modify this Purchase Order accordingly.

(e) The Seller agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this Purchase Order.

55. RESERVED

56. RESERVED

57. FAR 52.248-1, VALUE ENGINEERING (MAR 1989) (MODIFIED)

(This clause is applicable if this Purchase Order equals or exceeds \$100,000 except as modified as follows:

This clause does not apply to any work under this Purchase Order in connection with the nuclear propulsion plant, its associated components and systems which are under the technical cognizance of NAVSEA Code 08.)

Incorporated into this order by reference.

58. RESERVED

59. DFARS 252.249-7002, NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 1996) (MODIFIED)

(Applicable if this order equals or exceeds \$500,000. The term "Contracting Officer" as it appears herein shall retain its original meaning. The term "Contractor" as it appears herein shall mean the Buyer as it pertains to this purchase order.)

(a) Definitions

Major defense program means a program that is carried out to produce or acquire a major system (as defined in 10.U.S.C. 2302(5)) (see also DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the national Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) Notice to employees and state and local officials. Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to--

(1) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(2) If there is not such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act 929 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) Notice to subcontractors. Not later than 60 days after the Seller receives the Buyer's notice of the anticipated termination or reduction, the Seller shall--

(1) Provide notice of the anticipated termination or reduction to each subcontractor with a subcontract of \$100,000 or more; and

(2) Require that each such subcontractor--

(i) Provide notice to each of its subcontractors with a subcontract of \$100,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of \$100,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c).

60. DFARS 252.211-7000, ACQUISITION STREAMLINING (DEC 1991)

(Applies if this Purchase Order exceeds \$1 million.)

Incorporated into this order by reference.

61. RESERVED

62. NATIONAL STOCK NUMBERS, ASSIGNMENT AND USE OF

To the extent that National Stock Numbers (NSNs) or preliminary NSNs are assigned by the Government for the identification of parts, pieces, items, subassemblies or assemblies to be furnished under this contract, the Seller shall use such NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers and shipping documents as required by applicable specifications, standards or Data Item Descriptions of the contract or as required by orders for spare and repair parts.

Upon Seller's request via Buyer, the Buyer's cognizant Government Contract Administration Office shall be responsible for providing the Seller such NSNs or Preliminary NSNs which may be assigned and which are not already in the possession of the Seller.

63. RELEASE OF INFORMATION

(a) In accordance with Government policy, release or publication of any information, data, speeches, advertisements, promotional brochures or technical papers relating to the material ordered is prohibited unless prior authorization for release or publication has been obtained in writing from Buyer, except for release to lower-tier subcontractors or consultants as required for performance of the Purchase Order. Provisions similar to the forgoing shall be inserted in all lower-tier subcontracts related to this work.

(b) Refer also to clauses 63.A., 117, 118, 118.A., and 119 of these terms and conditions.

63.A. DFARS 252.204-7000, DISCLOSURE OF INFORMATION (DEC 1991) (MODIFIED)

(a) The Seller shall not release to anyone outside the seller's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this purchase order or any program related to this contract, unless-

(1) The Buyer's Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Seller shall submit its request to the Contracting office via Buyer at least 45 days before the proposed date for release.

(c) The Seller agrees to include a similar requirement in each subcontract under this purchase order. Lower-tier subcontractors shall submit requests for authorization to release through the Seller to the Buyer for transmittal to the Contracting Officer.

63.B. REFUNDS (SPARES AND SUPPORT EQUIPMENT) (NAVSEA) (SEP 1990)

(MODIFIED)

(This clause applies if the criteria of paragraph (h) below are met.)

(a)(1) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the Seller agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(2) The determination regarding intrinsic value will be made by the Buyer.

(b) For purposes of this requirement, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic purchase quantity as defined in FAR 52.207-4, plus the value of any unique requirements, including delivery terms, inspection, packaging or labeling.

(c) At any time up to two years after delivery of a spare part or item of support equipment, the Buyer may notify the Seller that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) above, the Seller agrees to enter into good faith negotiations with the Buyer to determine if, and in what amount, the Buyer and Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) above cannot be reached and the Navy's return of the new or unused item to the Buyer is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the Buyer. Upon return of the item to its original point of Government acceptance, the Buyer shall refund in full the price paid. Buyer will likewise return the item to the Seller and Seller will likewise refund in full the price paid. If no agreement pursuant to paragraph (d) above is reached, and return of the item by the Navy is impractical, the matter may be handled as a dispute.

(f) The Seller will make refunds, as required under this requirement, in accordance with instructions from the Buyer.

(g) The Seller shall not be liable for a refund if the Seller advised the Buyer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value and known alternative sources or items, if any, that can meet the requirement.

(h) This requirement does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This requirement also does not apply to any spare part or item of support equipment with unit price in excess of \$100,000 or in excess of \$25,000 if the Seller submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

64. RESERVED

65. FAR 52.215-2, AUDIT AND RECORDS - NEGOTIATION (AUG 1996) AND ALT II 4/98

(Applies if subcontract exceeds the simplified acquisition threshold in FAR Part 2 (\$100,000 as of FAC 90-45 of 1/1/97)) and is a Cost Reimbursement, Time & Materials, Incentive, Labor Hour or price redeterminable contract, or any combination of these; or for which cost or pricing data are required; or that require the subcontractor to furnish cost funding or performance reports.)

ALT II applies if this is a cost-reimbursement contract with a state or local government educational institution, or other non-profit organization.

Incorporated into this order by reference.

66. DFARS 252.215-7000, PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

67. FAR 52.215-22, PRICE REDUCTION

FOR DEFECTIVE COST OR PRICING

DATA (OCT 1995) (MODIFIED)

(Applies as modified below if this order exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) unless an exception from submission of certified cost or pricing data at FAR 15.804-1 applies. NOTE: FAR reference is to the version of the FAR in effect on the date of publication of this clause referenced above.)

Incorporated into this order by reference except that paragraph (d) is deleted and replaced with the following:

(d) Seller shall provide Buyer current, complete and accurate cost and pricing data and shall certify the same in accordance with applicable statute, regulation and requirements of the Buyer, and the Seller shall indemnify and hold the Buyer harmless from all loss, damage expense, and cost caused or arising out of Seller's failure or alleged failure to comply herewith. This indemnification requirement shall survive the end of this order.

68. FAR 52.215-23, PRICE REDUCTION

FOR DEFECTIVE COST OR PRICING

DATA - MODIFICATIONS (OCT 1995)

(MODIFIED)

A. This clause applies to any modifications to this Purchase Order involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.804-1 applies.

NOTE: FAR reference is to the version of the FAR in effect on the date of publication of this clause referenced above.

Incorporated into this order by reference except that paragraph (e) is deleted and replaced with the following:

(e). Seller shall provide Buyer current, complete and accurate cost and pricing data and shall certify the same in accordance with applicable statute, regulation and requirements of the Buyer, and the Seller shall indemnify and hold the Buyer harmless from all loss, damage expense, and cost caused or arising out of Seller's failure or alleged failure to comply herewith. This indemnification requirement shall survive the end of this order.

69. FAR 52.215-24, SUBCONTRACTOR

COST OR PRICING DATA (OCT 1995) (MODIFIED)

(Applies to any Purchase Order expected to exceed the threshold for submission of cost or pricing data as modified below.)

Incorporated into this order by reference except that in addition to changing the language to reflect the relationship of the parties, insert the words "substituting Buyer's name for Contracting Officer" in paragraph (b) after the word "(FAR)".

70. FAR 52.215-25, SUBCONTRACTOR

COST OR PRICING DATA - MODIFI-

CATIONS (OCT 1995) (MODIFIED)

(Applies as modified below to any purchase order that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later.)

Incorporated into this order by reference except that in addition to changing the language to reflect the relationship of the parties, insert the words "substituting Buyer's name for Contracting Officer" in paragraph (c) after the wording "FAR 15.804-4,".

NOTE: FAR reference is to the version of the FAR in effect on the date of publication of this clause referenced above.

70.A. FAR 52.215-42, REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (JAN 1997) AND ALT II (OCT 1995)

Incorporated into this order by reference.

71. FAR 52.232-17, INTEREST (JUNE 1996) (MODIFIED)

Incorporated by reference into this order except that in paragraphs (a) and (b)(3) leave "Government" as-is and add "or Buyer" after it.

72. FAR 52.215-30, FACILITIES CAPITAL COST OF MONEY

(SEP 1987)

(Applies, as modified below to reflect relationship of parties, if Seller proposed facilities capital cost of money in its offer. Otherwise, the clause entitled "Waiver of Facilities Capital Cost of Money" applies.)

A. Facilities capital cost of money will be an allowable cost under the contemplated Purchase Order, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective Seller to propose facilities capital cost of money in its offer.

B. If the prospective Seller does not propose this cost, the resulting Purchase Order will include the clause "Waiver of Facilities Capital Cost of Money."

73. FAR 52.215-31, WAIVER OF

FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(Applies, as modified below to reflect the relationship of the parties, if Seller did not propose facilities capital cost of money in its offer.)

The Seller did not include facilities capital cost of money as a proposed cost of this Purchase Order. Therefore, it is an unallowable cost under this Purchase Order.

74. FAR 52.230-2, COST ACCOUNTING STANDARDS (APR 1996) (MODIFIED)

(1) If this is a negotiated subcontract in excess of \$500,000, unless otherwise excepted or exempted under 48 CFR, Subparts 9903.201-1 and 9903.201-2, Cost Accounting Standards, as required by Rev. 4/96 of FAR 52.230-2 (Cost Accounting Standards), are applicable and hereby incorporated by reference as if set forth in full except that paragraph (b) is deleted and "United States" in paragraph (a)(4)(ii) means "Buyer or United States."

However, if Seller has certified that it is eligible for, and elects to use, modified CAS coverage, clause 75, FAR 52.230-3 "Disclosure and Consistency of Cost Accounting Practices" shall be applicable in lieu of this clause. However, clause 75.A., FAR 52.230-4 "Consistency in Cost Accounting Practices", shall be applicable if Seller is a United Kingdom contractor, the order is to be performed substantially in the United Kingdom, and the Seller is eligible under 48 CFR 9903.201-1(b)(12) (FAR Appendix B).

2. Seller shall communicate and otherwise deal directly with the Government Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Government Contracting Officer respecting this clause, provided Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to the Seller.

3. In addition to any other remedies provided by law or under this order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of Seller or its lower-tier subcontractors to comply with the requirements of this clause.

4. The Seller shall insert this clause in any negotiated subcontract in excess of \$500,000 when required by FAR 52.230-2 paragraph (d).

75. FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1996) (MODIFIED)

1. If this is a negotiated subcontract in excess of \$500,000, unless otherwise excepted or exempted from CAS applicability under 48 CFR, Subparts 9903.201-1 and 9903.201-2, CAS is applicable. However, if Seller has certified that it is eligible for, and elects to use, modified CAS coverage, the clause FAR 52.230-3, "Disclosure and Consistency of Cost Accounting Practices" is applicable and is incorporated into this order by reference, except that paragraph (b) of FAR 52.230-3 is deleted and "United States" in paragraph (a)(3)(ii) means "Buyer or United States".

However, Clause 75.A., FAR 52.230-4, "Consistency in Cost Accounting Practices", shall be applicable if Seller is a United Kingdom contractor, the order is to be performed substantially in the United Kingdom, and the Seller is eligible under 48 CFR 9903.201-1(b)(12) (FAR Appendix B).

2. Seller shall communicate and otherwise deal directly with the Government Contracting Officer to the extent practicable and permissible as to all matters relating to Cost

Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Government Contracting Officer respecting this clause, provided Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to the Seller.

3. In addition to any other remedies provided by law or under this order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of Seller or its lower-tier subcontractors to comply with the requirements of this clause.

4. The Seller shall insert this clause in any negotiated subcontract that exceeds \$500,000 when required by FAR 52.230-3 paragraph (d).

75.A. FAR 52.230-4, CONSISTENCY IN COST ACCOUNTING PRACTICES (AUG 1992) (MODIFIED)

(Refer to Clause 74.1 paragraph 2)

1. If this is a negotiated subcontract in excess of \$500,000 and is exempted from CAS coverage per 48 CFR 9903.201-1(b)(12) (FAR Appendix B) solely on the basis of the fact that the subcontract is to be awarded to a United Kingdom Contractor and is to be performed substantially in the United Kingdom, this clause is applicable in lieu of FAR 52.230-2 or FAR 52.230-3 and is incorporated below.

2. Seller shall communicate and otherwise deal directly with the Government Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Government Contracting Officer respecting this clause, provided Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to the Seller.

3. In addition to any other remedies provided by law or under this order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of seller or its lower-tier subcontractors to comply with the requirements of this clause.

FAR 52.230-4, CONSISTENCY IN COST ACCOUNTING PRACTICES (AUG 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U. S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U. K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

76. FAR 52.230-6, ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)

(If this order is subject to either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices" set forth above, this clause FAR 52.230-6, Administration of Cost Accounting Standards is applicable and is incorporated in this order by reference as if set forth in full.)

This clause is not applicable when clause 75.A., FAR 52.230-4 "Consistency in Cost Accounting Practices" is applicable.

77. DFARS 252.231-7000, SUPPLEMENTAL COST PRINCIPLES (DEC 1991) (MODIFIED)

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement (DFARS) in effect on the date of this Purchase Order. Also, see Clause 90, Pricing of Contract Modifications.

78. FAR 52.242-3, PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)

Incorporated into this order by reference.

79. FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COST (JAN 1997) (MODIFIED)

(Applies if this Purchase Order provides for (a) interim reimbursement of indirect costs; (b) establishment of final indirect cost rates; or (c) contract financing, that includes interim payment of indirect costs, e.g., progress payments).

(a) The Seller shall --

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the seller's organization at a level no lower than a vice president or chief financial officer of the business segment of the Seller that submits the proposal.

(b) Failure by the Seller to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Buyer or Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (*identify proposal and date*) to establish final indirect cost rates for (*identify period covered by rate*) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm:

Signature:

Name of Certifying Official:

Title:

Date of Execution:

80. FAR 52.242-1, NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) (MODIFIED)

(Applies if this is a cost-reimbursement, fixed price incentive, or price redeterminable purchase order.)

(a) Notwithstanding any other clause of this Purchase Order-

(1) The Buyer may at any time issue to the Seller a written notice of intent to disallow specified costs incurred or planned for incurrence under this Purchase Order that have been determined not to be allowable under the purchase order terms; and

(2) The Seller may after receiving a notice under subparagraph (1) above, submit a written response to the Buyer with justification for allowance of the costs. If the Seller does respond within 60 days, the Buyer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Buyer's or Government's rights to take exception to incurred costs.

81. SUBCONTRACTOR TRAVEL AND PER DIEM COSTS

Unless agreed to in writing by the Buyer, Seller agrees that:

(a) Travel and per diem costs which are to be paid to or reimbursed to Seller under this Purchase Order shall not exceed the amounts determined to be allowable by Federal Acquisition Regulation (FAR) Subpart 31.2.

(b) Costs incurred for lodging, meals and incidental expenses (M&IE) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the -

(i) Federal Travel Regulation (FTR) for travel in the lower 48 continental United States; or,

(ii) Joint Travel Regulations (JTR), Volume 2, Appendix A for travel in Alaska, Hawaii, Puerto Rico, and territories and possessions of the United States; or,

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas" or elsewhere.

Lodging and M&IE - Under the FTR, the per diem allowance for each day is established on the basis of the actual amount the traveler pays for lodgings (including all taxes and service charges) plus an allowance for M&IE, the total not to exceed the applicable maximum per diem rate for the location concerned.

Seller shall obtain and maintain receipts for lodging for audit purposes to substantiate invoiced amounts.

Airfare - When it is necessary to use air travel, Seller agrees that, except for special circumstances identified in FAR 31.205-46(0), airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable and EB is not obligated to reimburse any airfare costs in excess of these amounts.

(c) Travel to Electric Boat, Groton, CT

When travel to Electric Boat in support of this Purchase Order requires overnight accommodations, Seller may obtain Electric Boat contracted room rates at certain area hotels in order to comply with FTR lodging limitations for this area. When making reservations at one of these hotels, Seller is to identify itself as an Electric Boat subcontractor and to request the contracted rate.

Seller is not required to utilize any of these hotels. However, when this Order provides for the reimbursement of lodging costs, EB will not be obligated to reimburse any such costs in excess of the FTR amount.

Electric Boat makes no assurances of, and accepts no liability for, the availability of rooms at the contract rates at these area hotels.

Seller should contact the Buyer named on this Purchase Order for a current listing of area hotels with whom Electric Boat has contracted room rates.

82. RESERVED

83. RESERVED

84. RESERVED

85. RESERVED

86. FAR 52.215-27, TERMINATION OF DEFINED BENEFIT PENSION PLANS (MAR 1996)

(Incorporated into this order by reference if the applicability requirements of FAR 15-804-8(e) are met.)

NOTE: FAR reference is to the version of the FAR in effect on the date of publication of this clause referenced above.

87. FAR 52.215-39, REVERSION OR

ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (MAR 1996)

(This article applies if the applicability requirements of FAR 15.804-8(f) are met (Certified cost or pricing data is anticipated to be required for this order or if any pre-award or post-award cost determinations will be subject to FAR part 31)).

NOTE: FAR reference is to the version of the FAR in effect on the date of publication of this clause referenced above.

Incorporated into this order by reference.

88. LIMITATION ON PRICE

ADJUSTMENTS UNDER 10 USC

2405

(a) Buyer will not adjust any price for contract material for any amount set forth in a claim, request for equitable adjustment, or demand for payment under this contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 69 months before the submission of the claim, request, or demand.

(b) For the purposes of subsection (a), a claim, request or demand shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

(c) See also clause 92, Notification of Changes; clause 93, Documentation of Requests for Equitable Adjustments; clause 94, Certification of Requests for Equitable Adjustment; and, clause 95, Equitable Adjustments: Waiver and Release of Claims.

89. DFARS 252.243-7000, ENGINEERING CHANGE PROPOSALS (MAY 1994) (MODIFIED)

(a) The Buyer may ask the Seller to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Buyer, the Seller shall prepare and submit an engineering change proposal in accordance with the instructions of MIL-STD-973, in effect on the date of contract award.

(b) The Seller may initiate engineering change proposals. Seller initiated engineering change proposals shall include a "not to exceed" price* or a "not less than" price* and delivery adjustment. If the Buyer orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts**.

(c) When the price** of the engineering change is \$500,000 or more, the Seller shall submit:

(1) A completed SF1411, Contract Pricing Proposal Cover Sheet, and

(2) At the time of agreement on price*, a signed Certificate of Current Cost or Pricing Data.

* Use a term suitable for the type of contract

** In cost reimbursement type contracts, replace this sentence with the following: "change orders issued under the "CHANGES" clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost."

(d) Change orders issued under the "CHANGES" clause of this order are not an authorization to exceed the price or estimated cost in this order unless there is a statement in the change order, or other contract modification, increasing the price or estimated cost.

90. DFARS 252.243-7001, PRICING OF CONTRACT MODIFICATIONS

(DEC 1991) (MODIFIED)

When costs are a factor in any price adjustment under this contract, the contract cost principals and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this order.

Also, see Clause 77, Supplemental Cost Principles.

91. FAR 52.242-15, STOP-WORK

ORDER (AUG 1989) AND ALT I

(APR 84) (MODIFIED)

(a) Seller agrees that Buyer may, by written notice at any time, require Seller to stop all, or any part, of the work called for by this Purchase Order for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the "Default", or the "Termination" clause of this Purchase Order.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this Purchase Order; and

(2) The Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon the claim submitted at any time before final payment under this Purchase Order.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Buyer or the Government, the Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

Alternate I (APR 1984). If the clause is inserted in a cost-reimbursement contract, in paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the purchase order that may be affected" for the words "an equitable adjustment in the delivery schedule or purchase order price, or both."

91.A. FAR 52.233-3, PROTEST AFTER

AWARD (AUG 1996) AND ALT I (JUN 1985) MODIFIED

Incorporated, as modified, into this order by reference. ALT I applies if this is or is intended to be a cost-reimbursement type purchase order. In addition to revising the language to reflect the responsible parties, (1) change paragraph (a)(2) to read, "Terminate the work covered by the order as provided in the Termination clause of this purchase order", and, (2) delete paragraph (f).

92. NOTIFICATION OF CHANGES

The primary purpose of this requirement is to obtain prompt reporting by Seller of any acts or omissions by Buyer which the Seller considers would constitute or would require a change to this purchase order.

Seller shall provide prompt notice, but in no event no later than 20 days, after it learns of conduct by Buyer which Seller believes constitutes or requires a change to this contract. Such notice shall contain information in sufficient detail to place the Buyer on notice of the basis and nature of the change and the impact which the change is expected to have on the contract. Seller shall not proceed with the work under any alleged change until it receives formal written authorization of the change from the Buyer.

Changes affecting pricing or schedule may only be authorized by a representative of Electric Boat's Materials Management Department or Newport News Shipbuilding's Sourcing Department as the case may be.

Refer also to the "Changes" clauses in Sections II & III of these terms and conditions.

93. NAVSEA 5252.233-9103, DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (AT)-ALTERNATE I (MAY 1998) (MODIFIED)

(a) For the purposes of this requirement, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also (i) an engineering change proposed by the Buyer or the Seller pursuant to the "Other Change Proposals" or other requirements of this Purchase Order and (ii) any act or omission to act on the part of the Buyer or Government in respect of which a request is made for equitable adjustment under the "CHANGES" clause or any other article or requirement of this purchase order.

(b) Whenever the Seller requests or proposes an equitable adjustment of \$100,000 or more in respect of a change made pursuant to a written order designated as a "change order" or in respect of a proposed engineering change and when-ever the Seller requests an equitable adjustment in any amount in respect of any other act or omission to act on the part of the Buyer or Government, the proposal supporting such request shall include the following information for each individual item or element of the request:

(1) A description (i) of the work required by the Purchase Order before the change, which has been deleted by the change, and (ii) of the work deleted by the change which already has been completed. The description is to include a list of identifiable components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement or installation of such property is to be indicated. Separate description is to be furnished for design and production work. Items of identifiable raw material, purchased parts, components and other identifiable hardware, which are made excess by the change and which are not to be retained by the Seller, are to be listed for later disposition;

- (2) Description of work necessary to undo work already completed which has been deleted by the change;
- (3) Description of work which is substituted or added by the change. A list of identifiable components and equipment (not bulk materials or items) involved, should be included. Separate descriptions are to be furnished for design work and production work;
- (4) Description of interference and inefficiencies in performing the change;
- (5) Description of disruption attributable solely to the change; which description shall include the following information:
- (i) Description of each identifiable element of disruption and how work has been, or may be, disrupted;
 - (ii) The calendar period of time during which disruption occurred, or may occur;
 - (iii) Area(s) of the Seller's operations where disruption occurred, or may occur;
 - (iv) Trade(s) or functions disrupted, with a breakdown of man-hours and material for each trade or function;
 - (v) Scheduling of trades before, during, and after the period of disruption insofar as such scheduling may relate to or be affected by the estimated disruption;
 - (vi) Description of any measures taken to lessen the disruptive effect of the change.
- (6) Delay in delivery attributable solely to the change;
- (7) Other work or increased costs attributable to the change;
- (8) Supplementing the foregoing, a narrative statement of the nature of the alleged Buyer or Government act or omission, when the alleged Buyer or Government act or omission occurred, and the "causal" relationship between the alleged Buyer or Government act or omission and the claimed consequences therefor, cross-referenced to the detailed information provided as required above.
- (c) Each proposal submitted in accordance with this requirement shall include a copy of the Seller's labor budget at the cost class level in effect as of the date the event began, the cost incurred at the cost level as of the same date, and the proposed effect of the change at the cost class level.
- (d) It is recognized that an individual request for equitable adjustment may not include all of the factors listed in subparagraphs (b) (1) through (b) (8) above, or that the Seller may not reasonably be able to furnish complete information on all of the factors listed in subparagraphs (b) (1) through (b) (8) above. Accordingly, the Seller is only required to set forth in its request for equitable adjustment information with respect to those factors which are relevant to the individual request for equitable adjustment, or in the level of detail which is reasonably available to the Seller.
- (e) In addition to any information required under paragraph (b) above, each proposal submitted in support of a claim for equitable adjustment, under any requirement of this Purchase Order, in an amount which requires certified cost or pricing data, if requested by the Buyer, shall contain a duly executed Standard Form (SF) 1411 with respect to each individual claim item. The information furnished shall be in sufficient detail to permit the Buyer to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, as set forth in the SF 1411, with the information submitted pursuant to subparagraphs (b) (1) through (b) (8) hereof.
- (f) The certification requirements as set forth in clause 94 of these terms and conditions entitled "CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT" shall be complied with.
- (g) In addition, refer to Clause 88, "Limitation on price Adjustments Under 10 U.S.C. 2405."

94. CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT

(Based on DFARS 252.243-7002 (MAR 1998) (MODIFIED))

(NOTE: The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Seller believes the Buyer or the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold as defined in the Federal Acquisition Regulations (FAR) shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Seller:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

_____ (Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including-

(1) Cost or pricing data if required in accordance with FAR Part 15;

(2) Information other than cost or pricing data including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to-

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustments under an incentive provision of the contract.

95. NAVSEA 5252.233-9107, EQUITABLE ADJUSTMENTS: WAIVER AND RELEASE OF CLAIMS (JAN 1983) (MODIFIED)

(a) Whenever the Seller, after receipt of a change made pursuant to the clause of this Purchase Order entitled "CHANGES" or after affirmation of a constructive change, submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle the Seller, including but not limited to adjustments arising out of delays or disruptions or both caused by such change.

(b) Further, the Seller agrees (except as the parties may otherwise agree) that, if required by the Buyer, it will execute a release, in form and substance satisfactory to the Buyer, as part of the Purchase Order Supplement setting forth the aforesaid equitable adjustment, and that such release shall discharge the Buyer, Government, their officers, agents and employees, from any further claims including, but not limited to, further claims arising out of delays or disruptions or both, caused by the aforesaid change.

96. RESERVED

97. SELLER'S INFORMATION

Except for information disclosed in writing pursuant to the technical data rights provisions contained herein, any knowledge or information concerning Seller's products, methods or manufacturing processes which Seller may disclose to Buyer incident to the performance of the work under this Order shall not, unless otherwise specifically agreed upon by Buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restrictions and shall be deemed to have been disclosed as a part of the consideration for this Order and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof. It is Seller's responsibility to control its employees' inadvertent disclosure to Buyer of information not intended to be disclosed under this order.

98. FAR 52.227-2, NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

This clause applies if this order exceeds the simplified acquisition threshold at FAR 2.101 (Note: \$100K as of 9/12/97).

Incorporated into this order by reference.

99. RESERVED

100. FAR 52.227-10, FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER (APR 84)

(Applies if this order covers or is likely to cover classified subject matter.)

Incorporated into this order by reference.

101. PATENTS

(a) If this order or any modification hereof is for experimental, developmental, or research work:

(i) if Seller is a small business firm or nonprofit organization (as defined in FAR 27.301), FAR 52.227-11, Patent Rights - Retention by The Contractor (Short Form), is applicable and is incorporated herein by reference as if set forth in full, suitably modified to identify the parties; or

(ii) In all other purchase orders, regardless of tier, experimental, developmental, or research work, FAR 52.227-12 is applicable and is incorporated herein by reference as if set forth in full, suitably modified to identify the parties, except that

(iii) If the purchase order or any lower-tier subcontract is for nuclear propulsion plant systems or components thereof (i.e., nuclear propulsion cognizance items), clause 102 of these Terms and Conditions applies.

Seller agrees to make the disclosures and grant the rights to the Government to be made and granted by "Contractor" therein. Seller shall submit all reports required by such FAR clause directly to the Buyer's Contracting Officer (who will be identified by the Buyer) or to the Buyer, at the option of the Seller.

Seller shall include the substance of this paragraph (a) in every subcontract, regardless of tier, and shall comply with the mandatory flowdown requirements of the paragraph entitled, "Subcontracts" contained in the applicable clause.

Seller shall comply with the invention disclosure requirements of the applicable clause.

(b) The applicable revisions of FAR 52.227-11 and 52.227-12 are JUNE 1997 and JAN 1997, respectively.

Seller's attention is also directed to the following clauses which are incorporated into this document.

Clause 98 FAR 52.227-2, Notice and Assistance Regard-

ing Patent and Copyright

Infringement

Clause 100 FAR 52.227-10, Filing of Patent Applications-

Classified Subject Matter

Clause 102 Invention Rights

(c) The Seller agrees to indemnify Buyer and Government, their officers, agents, servants and employees against liability of any kind (including costs and expenses incurred) for the uses of any invention or discovery and for the infringement of any Letters Patent (not including liability arising pursuant to Section 183 U.S.C. - Title 35, as amended, prior to issuance of Letter Patent) occurring in the performance of this Order or arising by reason of the use or disposal by or from the account of Buyer and the Government of items manufactured or supplied under this Order, except, however, (1) infringement necessarily resulting from Seller's compliance with written specifications, (2) provisions for other than standard products or components manufactured or supplied by the Seller, or (3) resulting from specific written instructions given by Buyer for the purpose of directing a manner of performance of the Order not normally utilized by Seller.

102. INVENTION RIGHTS

(Applicable to Nuclear Propulsion cognizance items only)

Notwithstanding any other provision of this order, if in the performance of this purchase order, the Seller, or its subcontractor, invents, discovers, conceives, or first actually reduces to practice a patentable invention, the entire right, title and interest in said invention shall be assigned to the Government, subject only to a royalty-free, non-exclusive license in the Seller or its subcontractor, to practice the same.

The Seller will submit annually a report, including negative reports, of any such patentable inventions to the Buyer named on this order.

103. RESERVED

104. RESERVED

105. NAVSEA 5252.227-9114, UNLIMITED RIGHTS IN TECHNICAL DATA-NUCLEAR PROPULSION PLANT SYSTEMS (NOV 1996) (MODIFIED)

This clause modifies clause 106, "Rights in Technical Data - Noncommercial Items".

(a) Pursuant to subparagraph (b)(1) of the clause entitled "RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS (NOV 1995) (DFARS 252.227-7013), the Seller agrees that all technical data pertaining to nuclear propulsion plant systems under the technical cognizance of the Deputy Commander, Nuclear Propulsion Directorate, Naval Sea Systems Command (SEA 08), which is to be delivered under this order pursuant to the Buyer's prime or higher-tier contract, shall be delivered with unlimited rights, provided, however, that nothing in the clause shall be deemed to require Seller or any subcontractor of any tier under Buyer's prime or higher-tier contract to deliver or furnish with unlimited rights any technical data which he is entitled to deliver with limited rights pursuant to said "RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS (NOV 1995) clause.

(b) It is further agreed that promptly after delivery of, or after any termination of, all work under this purchase order, the Seller shall submit a letter report to the Buyer listing and providing a brief description of all items of technical data pertaining to the reactor plant(s) of the vessel(s) developed or prepared under this purchase order which were not specified to be delivered pursuant to this purchase order. The Seller shall furnish in the Seller's format and at the cost of reproduction, with unlimited rights, copies of items of technical data so reported or which should have been reported, as the Buyer or the Government may require in writing from time to time and at any time. However, nothing in this requirement shall require the Seller to retain any item of such technical data beyond the period provided for in this purchase order, including the specifications, and other documents incorporated by reference, applicable to the item or type of technical data involved.

106. DFARS 252.227-7013, RIGHTS IN TECHNICAL - NONCOMMERCIAL ITEMS (NOV 1995) (MODIFIED)

This clause is incorporated into this order by reference as if set forth in full as modified by clause 105, "Unlimited Rights in Technical Data - Nuclear Propulsion Plant Systems", and clause 14, "Logistic Support Requirement."

Seller shall comply with the mandatory flowdown provisions contained therein.

106.A. DFARS 252.227-7014, RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUNE 1995)

Incorporated into this order by reference.

106.B. DFARS 252.227-7015, TECHNICAL DATA - COMMERCIAL ITEMS (NOV 1995)

Incorporated into this order by reference.

106.C. DFARS 252.227-7016, RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)

Incorporated into this order by reference.

106.D. DFARS 252.227-7017, IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

Incorporated into this order by reference.

107. DFARS 252.227-7018, RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE - SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (JUN 1995)

Incorporated into this order by reference.

107.A. DFARS 252.227-7019, VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (JUN 1995)

Incorporated into this order by reference.

107.B. DFARS 252.227-7020, RIGHTS IN SPECIAL WORKS (JUN 1995)

Incorporated into this order by reference.

107.C. DFARS 252.227-7025, LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT - FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUN 1995)

Incorporated into this order by reference.

108. DFARS 252.227-7027, DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)

Incorporated into this order by reference.

108.A. 252.227-7028, TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

Incorporated into this order by reference.

109. RESERVED

110. DFARS 252.227-7030, TECHNICAL DATA-WITHHOLDING OF PAYMENT (OCT 1988) (MODIFIED)

A. If technical data specified to be delivered under this Purchase Order, is not delivered within the time specified by this purchase Order or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at DFARS 252.227-7013(k)), the Buyer may, until such data is accepted, withhold payment to the Seller of two percent (2%) of the total Purchase Order price or amount unless a lesser withholding is specified in the Purchase Order. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Seller's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Seller.

B. The withholding of any amount or subsequent payment to the Seller shall not be construed as a waiver of any rights accruing to the Buyer or the Government under this Purchase Order.

111. DFARS 252.227-7037, VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (NOV 1995)

Incorporated into this order by reference.

112. DRAWINGS AND SPECIFICATIONS

Upon completion of work by Seller under this Order, Seller shall promptly return to Buyer all drawings, specifications, and other data or papers furnished by Buyer in connection herewith together with all copies or reprints then in Seller's possession and control, unless otherwise directed by the Buyer, and Seller shall thereafter make no further use of any such drawings, specifications, data or papers or of any information derived therefrom without Buyer's prior written consent.

This restriction does not apply in the event:

- (a) The Seller obtains such drawings, specifications, data, or papers, or any information derived therefrom, legally from another source; or
- (b) Such drawings, specifications, data, or papers are Government property and the Government, directly or indirectly, authorizes such further use by Seller.

113. DFARS 252.227-7036,

DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997) (MODIFIED)

All technical data delivered under this contract shall be accompanied by the following written declaration:

The Contractor, _____,

hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Purchase Order No.

_____ is complete, accurate, and complies with all requirements of the contract.

Date:

Name and Title of Authorized Official:

114. RESERVED

115. RESERVED

116. YEAR 2000 WARRANTY - COMMERCIAL SUPPLY ITEMS (MODIFIED)

This purchase order is a subcontract under a cost reimbursement type prime contract with the U.S. Government. A commercial supply item is an item which meets the definition of "commercial item" contained in FAR 52.202-1, Definitions.

(a) The Seller warrants that each hardware, software, and firmware product delivered under this purchase order shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the years 1999 and 2000 and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Seller, provided that all listed or unlisted products (e.g., hardware, software, firmware) used in combination with such listed product properly exchange date data with it. If the purchase order requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those products as a system. The duration of this warranty and the remedies available to the Buyer or the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the seller's or manufacturer's standard commercial warranty or the warranties contained in this purchase order, provided that, notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Buyer or the Government under this warranty shall include repair or replacement of any product whose non-compliance is discovered and made known to the Seller in writing within ninety (90) days after acceptance or March 31, 2001, whichever is later. Nothing in this warranty shall be construed to limit any rights or remedies the Buyer or the Government may otherwise have under this purchase order with respect to defects other than Year 2000 performance.

(b) The Seller agrees to insert the substance of this clause, including this paragraph, in every subcontract issued in performance of this purchase order.

116.A. YEAR 2000 WARRANTY - NON-COMMERCIAL SUPPLY ITEMS (MODIFIED)

This purchase order is a subcontract under a cost reimbursement type prime contract with the U.S. Government. A non-commercial supply item is an item which does not meet the definition of "commercial item" contained in FAR 52.202-1, Definitions.

(a) The Seller warrants that each non-commercial item of hardware, software, and firmware delivered or developed under this purchase order shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the years 1999 and 2000 and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Seller, provided that all listed or unlisted products (e.g., hardware, software, firmware) used in combination with such product properly exchange date data with it. If the purchase order requires that specific products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those products as a system. The duration of this warranty and the remedies available to the Buyer or the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the seller's or manufacturer's standard commercial warranty or the warranties contained in this purchase order, provided that, notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to the Buyer or the Government under this warranty shall include repair or replacement of any item whose non-compliance is discovered and made known to the Seller in writing within 90 days after acceptance or March 31, 2001, whichever is later. Nothing in this warranty shall be construed to limit any rights or remedies the Buyer or the Government may otherwise have under this purchase order with respect to defects other than Year 2000 performance.

(b) The Seller agrees to insert the substance of this clause, including this paragraph, in every subcontract issued in performance of this purchase order.

117. NAVSEA 5252.227-9100, PROTECTION OF NAVAL NUCLEAR PROPULSION INFORMATION

(JAN 86) (MODIFIED)

This clause is applicable if this Purchase Order calls for the development or use of Naval Nuclear Propulsion Information.

(a) Naval Nuclear Propulsion Information is defined as that information and/or hardware concerning the design, arrangement, development, manufacturing, testing, operation, administration, training, maintenance, and repair of the propulsion plants of Naval Nuclear Powered Ships including the associated shipboard and shore-based nuclear support facilities.

Seller shall develop and implement appropriate policies and procedures for the safeguarding from actual, potential or inadvertent release by the Seller, or any subcontractor, of any Naval Nuclear Propulsion Information in any form, classified or unclassified. Such safeguards shall ensure that only Governmental, Buyer and Seller parties, including subcontractors, that have an established need-to-know, have access in order to perform work under this contract, and then only under conditions which assure that the information is properly protected. **Access by foreign nationals or immigrant aliens is not permitted. A foreign national or immigrant alien is defined as a person not a United States citizen or a United States National. United States citizens representing a foreign government, foreign private interest or other foreign nationals, are considered to be foreign nationals for industrial security purposes and the purpose of this restriction.** In addition, any and all issue or release of such information beyond such necessary parties, whether or not ordered through an administrative or judicial tribunal, shall be brought to the attention of the Buyer's Contracting Officer for Security via Buyer.

(b) The Buyer's Contracting Officer for Security shall be immediately notified via Buyer of any litigation, subpoenas, or requests which either seek or may result in the release of Naval Nuclear Propulsion Information.

(c) In the event that a court or administrative order makes immediate review by the Contracting Officer for Security impractical, the Seller agrees to take all necessary steps to notify the court or administrative body of the Navy's interest in controlling the release of such information through review and concurrence in any release.

(d) The Buyer's Contracting Agency reserves the right to audit Seller's facilities for compliance with the above restrictions.

(e) Exceptions to these requirements may only be obtained with prior approval from the Commander, Naval Sea Systems Command (Contact SEA 09T1) via Buyer.

118. NAVSEA 5252.227-9101, TRANSMISSION ABROAD OF EQUIPMENT OR TECHNICAL DATA RELATING TO THE NUCLEAR PROPULSION OF NAVAL SHIPS (NOV 1996) (MODIFIED)

(a) Equipment and technical data defined as Naval Nuclear Propulsion Information (NNPI) under NAVSEAINST 5511.32B shall not be disclosed to foreign nationals.

(b) For other than equipment and technical data defined as NNPI in paragraph (a) above, except with the prior written consent of the Buyer and the Government, or their designated representatives, the Seller shall not, at any time during or after the performance of this Contract, transmit, or authorize the transmittal of any equipment or technical data, as defined in paragraph (c) below, (1) outside the United States, or (2) irrespective of location, (i) to any foreign national, not working on this contract or any subcontract hereunder (ii) to any foreign organization (including foreign subsidiaries and affiliates of the Seller), (iii) to any foreign Government, or (iv) to any international organization.

(c) As used in this requirement, the following terms shall have the following definitions:

(1) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States;

(2) "equipment" means all supplies of the kind specified to be delivered under this contract, all component parts thereof, and all models of such supplies and component parts; but "equipment" does not include standard commercial supplies and component parts, and models thereof;

(3) "technical data" means all professional, scientific, or technical information and data produced or prepared for the performance of this contract, or on or for the operation, maintenance, evaluation, or testing of any contract item, whether or not the information and data were specified to be delivered under this contract including, without limitation, all writings, sound recordings, pictorial reproductions, and drawings or other graphical representations; but "technical data" does not include such information and data on standard commercial supplies and component parts to the extent that the information and data do not relate to the use, operation, maintenance, evaluation and testing of such supplies and component parts in or in connection with any item, or component parts thereof, specified to be delivered under this purchase order.

(d) The Seller agrees to insert in all lower-tier subcontracts under this Purchase Order provisions which shall conform substantially to the language of this requirement, including this paragraph (d)

(e) Notwithstanding any other provisions of this requirement, this requirement shall not apply (1) where the transmittal or authorization for the transmittal of equipment or technical data is to be made pursuant to a contract or agreement to which the United States is a party; and (2) where the transmittal is to be of equipment or technical data which the Buyer and U.S. Government, or their designated representatives, have declared in writing to the Contractor to be thereafter exempt from this requirement.

118.A. MARKING OF DOCUMENTS CONTAINING NAVAL NUCLEAR PROPULSION INFORMATION (NNPI)

All documents containing NNPI are subject to special marking, handling and disclosure requirements contained in this order and NAVSEAINST C5511.32B.

Documents containing UNCLASSIFIED NAVAL NUCLEAR PROPULSION INFORMATION shall be marked in accordance with NAVSEAINST C5511.32B and with the following NOFORN Warning Notice:

NOFORN: This document is subject to special export controls and each transmittal to foreign governments or foreign nationals may be made only with prior approval of the NAVAL SEA SYSTEMS COMMAND.

Classified NNPI documents have additional special handling and marking requirements. Refer to NAVSEAINST C5511.32B.

119. EXPORT CONTROL OF

TECHNICAL DATA

(a) Documentation associated with our end product, submersibles, (including but not limited to drawings, sketches, specifications, diagrams, models), discussions, telecons, or any other transfer of information, whether verbal or written, are considered to be technical data for export control as outlined in Title 22 Code of Federal Regulations Subchapter M, International Traffic in Arms Regulations (ITAR), Part 120 ET AL.

(b) Seller is solely and expressly responsible to insure that any dissemination of such "technical data" is accomplished in accordance with Purchase Order requirements and ITAR and that all requisite export and/or offshore procurement licenses are obtained. Failure to comply with these requirements may lead to civil as well as criminal penalties.

(c) Seller is also responsible for highlighting these legal requirements to all lower-tier subcontractors and to flow down these obligations through their terms and conditions.

(d) Refer also to the requirements of clause 118 (NAVSEA 5252.227-9101, Transmission Abroad of Equipment of Naval Ships) paragraph (b) which addresses approval requirements for other than NNPI.

120. DFARS 252.225-7026, REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (NOV 1995)

(This Article is applicable less paragraph (c) if this purchase order exceeds \$100,000; however, it is not applicable if this order is for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence. Seller shall request the prime contract number for reporting purposes from the Buyer named on this order.)

Incorporated into this order by reference.

121. DFARS 252.225-7028, EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (DEC 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance

of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

122. RESERVED

123. RESERVED

124. RESERVED

125. RESERVED

126. FAR 52.225-11, RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

127. RESERVED

128. DFARS 252.225-7012, PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 1997)

(Applicable unless this order does not require the delivery of any of the items cited in the clause.)

Incorporated into this order by reference.

129. DFARS 252.225-7014, PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAR 1998)

AND ALTERNATE I (MAR 1998)

(This clause is applicable unless the item(s) being procured contain no specialty metals.)

Incorporated into this order by reference.

130. DFARS 252.225-7015, PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (DEC 1991)

(Applies if the Purchase Order requires hand or measuring tools to be delivered.)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

131. DFARS 252.225-7016, RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (SEP 1996)

Incorporated into this order by reference.

132. RESERVED

133. DFARS 252.209-7000, ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)) (MODIFIED)

(Applies if this Purchase Order is not for a commercial item and it exceeds the simplified acquisition threshold in FAR Section 13.000. NOTE: The threshold is \$100,000 as of FAC 90-29 of July 3, 1995.)

(a) The Seller shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Russian (C.I.S.) inspectors at the subcontractor's facility, unless the decision is approved by the Buyer's Contracting Officer.

(b) The Seller shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulations, except those for commercial items.

134. DFARS 252.225-7019, RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN (DEC 1991)

(This Article applies unless the items acquired on this purchase order contain none of the restricted welded shipboard anchor and mooring chain.)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract--

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) #9; The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

135. DFARS 252.225-7022, RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) BASED CARBON FIBER (DEC 1991)

Incorporated into this order by reference.

136. RESERVED

137. RESERVED

138. DFARS 252.225-7025, RESTRICTION ON ACQUISITION OF FORGINGS (JUNE 1997)

(This clause applies if the products purchased on this order contain restricted forging items.)

Incorporated into this order by reference.

139. DFARS 252.225-7029, PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (APR 1995)

Incorporated into this order by reference.

140. DFARS 252.225-7034, RESTRICTION ON ACQUISITION OF COAL AND PETROLEUM PITCH CARBON FIBER (MAY 1994)

Incorporated into this order by reference.

141. RESERVED

142. RESERVED

143. FAR 52.225-10, DUTY-FREE ENTRY (APR 1984) (MODIFIED)

(This clause applies if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.)

Incorporated into this order by reference except that in the last sentence of paragraph (h) "the contract" means the Government prime contract under which this order is issued.

144. (DFARS 252.225-7009, DUTY FREE ENTRY QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (JAN 1997)

(Applies if this Purchase Order requires the furnishing of supplies.)

Incorporated into this order by reference.

145. DFARS 252.225-7010, DUTY FREE

ENTRY ADDITIONAL PROVISIONS

(JAN (1997)

(Applies if this Purchase Order requires

the furnishing of supplies.)

Incorporated into this order by reference.

146. RESERVED

147. DFARS 252.247-7023, TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995) (MODIFIED)

(Applies if this Purchase Order exceeds the small purchase limitation of section 13.000 of the Federal Acquisition Regulation. NOTE: The threshold is \$100,000 as of FAC 90-29 of July 3, 1995.) This clause does not apply to a subcontractor who is a supplier, materialman, distributor, or vendor of commercial items or commercial components.

1. Incorporated into this order by reference except as modified as follows:

"Contractor" shall mean "prime contractor" in paragraph (a)(1); "subcontractor(s)" shall retain its original meaning in paragraph (a); "contract" shall mean "prime contract" in paragraph (a)(i); "Contracting Officer" shall retain its original meaning in paragraphs (b), (c) (d), and (e); and "for the purposes of the clause of the contract entitled "Prompt Payment" shall be deleted in paragraph (f).

2. Seller shall comply with the mandatory flowdown requirements of paragraph (g).

148. RESERVED

149. RESERVED

150. FAR 52.247-63, PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

(Applies if this order may involve international air transportation.)

Incorporated into this order by reference. NOTE: Mandatory flowdown requirement exists.

151. RESERVED

152. FAR 52.222-4, CONTRACT

WORK HOURS AND SAFETY

STANDARDS ACT - OVERTIME

COMPENSATION (JUL 1995) (MODIFIED)

If this order is in excess of \$100,000, this clause is incorporated by reference into this order except that paragraph (e) is revised to read as follows:

(e) Subcontracts. The Seller shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

153. RESERVED

154. FAR 52.222-20, WALSH-HEALEY

PUBLIC CONTRACTS ACT (DEC

1996) (Modified to change

"Contract" to "Purchase Order")

If this Purchase Order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act as amended (41 U.S. Code 35-45), the following terms and conditions apply:

A. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

B. All employees whose work relates to this Purchase Order shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

155. FAR 52.222-26, EQUAL

OPPORTUNITY (APR 84)

(MODIFIED)

(This clause applies, as modified below to reflect the relationship of parties, unless all of the terms of the clause are exempt from the requirements of EO 11246 (See FAR 22.807(a)).)

A. If, during any 12-month period (including the 12 months preceding the award of this Purchase Order), the Seller has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Seller shall comply with subparagraphs B.(1) through (11) below. Upon request, Seller shall provide information necessary to determine the applicability of this clause.

B. During performance of the Purchase Order, Seller agrees as follows:

(1) Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

(3) Seller shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Seller shall, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Seller's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) Seller shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) Seller shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Seller is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Purchase Order may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Seller as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) Seller shall include the terms and conditions of subparagraph B.(1) through (11) of this clause in every subcontract or Purchase Order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) Seller shall take such action with respect to any subcontract or Purchase Order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Seller may request the United States to enter into the litigation to protect the interests of the United States.

C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

156. FAR 52.222-35, AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(Applies if this Purchase Order is for \$10,000 or more unless exempted.)

Incorporated into this order by reference.

157. FAR 52.222-36, AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(Applies if this Purchase Order exceeds \$2,500 unless exempted.)

Incorporated into this order by reference.

158. FAR 52.222-37, EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

(Applies if this Purchase Order is for \$10,000 or more unless exempted.)

Incorporated into this order by reference.

159. FAR 52.223-2, CLEAN AIR AND WATER (APR 1984)

(Applies if:

(1) This order is expected to exceed \$100,000.

(2) Orders under an indefinite quantity purchase order in any year are expected to exceed \$100,000, or,

(3) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency as a violating facility; and,

(4) This acquisition is not otherwise exempt under FAR 23.104.)

Incorporated into this order by reference.

160. FAR 52.223-3, HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (MODIFIED)

(Applies if this order requires the delivery of hazardous materials as defined in FAR 23.301.)

(Refer also to clause 165.)

Incorporated by reference into this order except that "Government" shall mean "Government or Buyer" in paragraph (f) and "Government" shall retain its original meaning in paragraph (h).

161. FAR 52.223-7, NOTICE OF RADIO-ACTIVE MATERIALS (JAN 1997)

(This article applies if this order is for radioactive materials meeting the criteria of paragraph (a) of the clause.)

Incorporated into this order by reference.

162. RADIOACTIVE MATERIAL PROHIBITED

Material furnished by Seller under this Purchase Order shall be free of known radioactive material unless prior written approval is granted by Buyer.

163. EXCLUSION OF MERCURY

Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this purchase order.

164. RESERVED

165. TOXIC AND HAZARDOUS SUBSTANCES PROHIBITED - CONDITIONAL ACCEPTANCE OF CERTAIN MATERIALS

(a) The Seller of any material or items containing toxic or hazardous substances shall provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200 including a completed Material Safety Data Sheet (OSHA Form 20) and the mandated labeling information.

(b) Materials which contain any of the toxic or hazardous substances as specified by OSHA 29 CFR 1910.1001-1910.1052 are prohibited unless prior written approval is granted by either the Industrial Hygiene Department for Electric Boat Corporation via the Buyer's representative names on this order; or by the cognizant Buyer for Newport News Shipbuilding; or unless the Purchase Order by its terms specifies the delivery of materials listed as toxic or hazardous substances.

166. FAR 52.223-11, OZONE-DEPLETING

SUBSTANCES (JUNE 1996)

(Except for orders to be performed outside the U.S., its possessions, and Puerto Rico, this clause applies if this RFQ/PO is for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.)

Incorporated into this order by reference.

166.A. OZONE-DEPLETING SUBSTANCES (ODS)

(a) Although some of the primary and sub-tier references require the use of ODS, the contractor is not required to use ODS to fulfill contract requirements. For the sub-tier references that require the use of ODS, an alternate reference may not exist at this time; however, the use of ODS is not required.

(b) If an ODS is used, the labeling requirements of clause 166 above apply.

167. FAR 52.223-12, REFRIGERATION

EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

(Applies if this Purchase Order is for services that include the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

168. RESERVED

169. FAR 52.223-6, DRUG-FREE WORKPLACE (JAN 1997)

Incorporated into this order by reference.

170. DFARS 252.223-7004, DRUG-FREE WORKFORCE (SEP 1988)

Incorporated into this order by reference.

201. DISCOUNT

The cash discount period shall be calculated from the date an acceptable invoice is received by Buyer, or from the date all the invoiced supplies are received by Buyer, whichever is latest in time. For the purpose of computing the discount earned, payment shall be considered to have been made on the date Buyer's check was mailed.

202. FAR 52.232-11, EXTRAS (APR 1984)

(MODIFIED)

Except as otherwise provided in this Purchase Order, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Buyer.

203. FAR 52.243-1, CHANGES - FIXED PRICE (AUG 1987) WITH ALT I (4/84) & ALT II (4/84) (MODIFIED)

A. Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order in any one or more of the following:

- (1) Drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Inspection standards.
- (4) Place or time of inspection, delivery or acceptance.

B. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Purchase Order, whether or not changed by the order, Buyer shall make an equitable adjustment in the Purchase Order price, the delivery schedule, or both, and shall modify the Purchase Order.

C. Seller must assert its right to an adjustment under this clause within 20 days from the date of receipt of the written order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the Purchase Order.

D. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of the disposition of the property.

E. Failure to agree to any adjustment shall be a dispute which may be litigated if negotiations fail. However, nothing in this clause shall excuse Seller from proceeding with the Purchase Order as changed.

Alternate I. If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause: (a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services.

Alternate II. If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Inspection standards.

(7) Place or time of inspection, delivery, or acceptance.

204. GOVERNMENT PROPERTY (FIXED- PRICE CONTRACTS) (BASED ON FAR 52.245.2 (DEC 1989) (MODIFIED))

A. Government-Furnished Property

(1) Buyer shall deliver to the Seller, for use in connection with and under the terms of this Purchase Order, the Government-furnished property described in the Purchase Order or specifications together with any related data and information that the Seller may request and as reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this Purchase Order are based upon the expectation that Government-furnished property suitable for use (*except for property furnished "as-is"*) will be delivered to the Seller at the times stated in the Purchase Order or, if not so stated, in sufficient time to enable the Seller to meet the Purchase Order's delivery or performance dates.

(3) If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt of it, notify the Buyer's Purchasing Representative detailing the facts, and, as directed by the Buyer's Purchasing Representative and at Buyer's expense, either repair, modify, return or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, Buyer's Purchasing Representative shall make an equitable adjustment as provided in paragraph H. of this clause.

(4) If Government-furnished property is not delivered to the Seller by the required time, Buyer's Purchasing Representative shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph H. of this clause.

B. Changes in Government-Furnished Property

(1) Buyer's Purchasing Representative may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this Purchase Order or (ii) substitute other Government-furnished property for the property to be provided by Buyer or to be acquired by the Seller for the Government under this Purchase Order. The Seller shall promptly take such action as Buyer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Seller's written request, Buyer's Purchasing Representative shall make an equitable adjustment to the Purchase Order in accordance with paragraph H. of this clause, if Buyer has agreed in the Purchase Order to make the property available for performing this Purchase Order and there is any:

(a) decrease or substitution in this property pursuant to subparagraph B.(1) above; or

(b) withdrawal of authority to use this property, if provided under any other Purchase Order or lease.

C. Title in Government Property

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished

property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause in the purchase order and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of special test equipment acquired by the Seller for the Government under this Purchase Order shall pass to and vest in the Government when its use in performing this Purchase Order commences or when the Government via Buyer or otherwise has paid for it, whichever is earlier, whether or not title was previously vested in the Government. No items of facilities may be acquired under this purchase order for the account of the Government without prior written Buyer approval.

(4) If this Purchase Order contains a provision directing the Seller to purchase material for which Buyer will reimburse the Seller as a direct item of cost under this Purchase Order:

(a) title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(b) title to all other material shall pass to and vest in the Government upon:

(i) issuance of the material for use in Purchase Order performance;

(ii) commencement of processing of the material or its use in Purchase Order performance; or

(iii) reimbursement of the cost of the material by Buyer, whichever occurs first.

D. Use of Government Property

The Government property shall be used only for performing this Purchase Order, unless otherwise provided in this Purchase Order or approved by Buyer's Purchasing Representative.

E. Property Administration

(1) The Seller shall be responsible and accountable for all Government property provided under this Purchase Order and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this Purchase Order.

(2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this Purchase Order, Buyer shall replace the items or the Seller shall make such repairs as Buyer directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by Buyer's Purchasing Representative. When any property for which the Government is responsible is replaced or repaired, Buyer's Purchasing Representative shall make an equitable adjustment in accordance with paragraph H. of this clause unless Seller has assumed risk in accordance with paragraph (g).

(4) The Seller represents that the Purchase Order price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller at its own expense.

F. Access

The Government or Buyer and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Risk of Loss

Unless otherwise provided in this Purchase Order, the Seller assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to Government property upon its delivery to the Seller or upon passage of title to the Government under paragraph C. of this clause. However, the Seller is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this subcontract.

H. Equitable Adjustment

When this clause specifies an equitable adjustment, it shall be made to any affected Purchase Order provision in accordance with the procedures of the Changes clause. When appropriate, Buyer's Purchasing Representative may initiate an equitable adjustment in favor of Buyer. The right to an equitable adjustment shall be the Seller's exclusive remedy. Neither the Government nor the Buyer shall be liable to suit for breach of contract for:

- (1) any delay in delivery of Government-furnished property;
- (2) delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) a decrease in or substitution of Government-furnished property; or
- (4) failure to repair or replace Government property for which Buyer is responsible.

I. Final Accounting and Disposition of Government Property

Upon completing this Purchase Order, or at such earlier dates as may be fixed by Buyer's Purchasing Representative, the Seller shall submit, in a form acceptable to Buyer's Purchasing Representative, inventory schedules covering all items of Government property (*including any resulting scrap*) not consumed in performing this Purchase Order or delivered to Buyer. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by Buyer's Purchasing Representative. The net proceeds of any such disposal shall be credited to the Purchase Order price or shall be paid to Buyer as Buyer's Purchasing Representative directs.

J. Abandonment and Restoration of Seller Premises

Unless otherwise provided herein, the Government or Buyer:

- (1) may abandon any Government property in place, at which time all obligations of the Government or Buyer regarding such abandoned property shall cease; and
- (2) has no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Purchase Order completion). However, if the Government-furnished property (listed in the Purchase Order or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph H. of this clause may properly include restoration or rehabilitation costs.

K. Communications

All communications under this clause shall be in writing.

L. Overseas Orders

If this Purchase Order is to be performed outside of the United States of America, its territories or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

205. FAR 52.246-2, INSPECTION OF

SUPPLIES - FIXED PRICE

(AUG 1996) (MODIFIED)

A. Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

B. The Seller shall provide and maintain an inspection system acceptable to the Buyer and the Government covering supplies under this Purchase Order and shall tender to the Buyer for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Seller to be in conformity with Purchase Order requirements. As part of the system, the Seller shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Buyer and/or the Government during Purchase Order performance and for as long afterwards as the Purchase Order requires. The Buyer or the Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations

shall be conducted in a manner that will not unduly delay the Purchase Order work. The right of review, whether exercised or not, does not relieve the Seller of the obligations under the Purchase Order.

C. Buyer and/or the Government have the right to inspect and test all supplies called for by the Purchase Order, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Buyer and/or the Government shall perform inspections and tests in a manner that will not unduly delay the work. Buyer assumes no contractual obligation to perform any inspection and test for the benefit of the Seller unless specifically set forth elsewhere in this Purchase Order.

D. If the Buyer or the Government performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Purchase Order, Buyer and/or the Government shall bear the expense of inspections or tests made by either of them at other than the Seller's or subcontractor's premises; provided, that in case of rejection, Buyer *and/or the Government* shall not be liable for any reduction in the value of inspection or test samples.

E. (1) When supplies are not ready at the time specified by the Seller for inspection or test, Buyer may charge to the Seller the additional cost of inspection or test.

(2) Buyer may also charge the Seller for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

F. Buyer has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Purchase Order requirements. Buyer may reject nonconforming supplies with or without disposition instructions.

G. Seller shall remove supplies rejected or required to be corrected. However, Buyer may require or permit correction in place, promptly after notice, by and at the expense of Seller. Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

H. If Seller fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, Buyer may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to Seller or (2) terminate the Purchase Order for default. Unless Seller corrects or replaces the supplies within the delivery schedule, Buyer may require their delivery and make an equitable price reduction.

I. (1) If this Purchase Order provides for the performance of Buyer or Government quality assurance at source, and if requested by Buyer or Government, Seller shall furnish advance notification of the time (i) when Seller inspection or tests will be performed in accordance with the terms and conditions of the Purchase Order and (ii) when the supplies will be ready for Buyer and/or Government inspection.

(2) The Buyer and/or Government's request shall specify the period and method of the advance notification and Buyer or Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Buyer or Government representative is in residence in the Seller's plant, nor more than 7 workdays in other instances.

J. Buyer shall accept or reject supplies as promptly as practicable after delivery unless otherwise provided in the Purchase Order. The Buyer's failure to inspect and accept or reject the supplies shall not relieve Seller from responsibility, nor impose liability on Buyer, for nonconforming supplies.

K. Inspections and tests by the Buyer and/or Government do not relieve the Seller of responsibility for defects or other failures to meet Purchase Order requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the Purchase Order.

L. If acceptance is not conclusive for any of the reasons in paragraph K. hereof, Buyer, in addition to any other rights and remedies provided by law, or under other provisions of this Purchase Order, shall have the right to require Seller (1) at no increase in Purchase Order price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at Seller's plant at Buyer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between Seller and Buyer; provided, that Buyer may require a reduction in Purchase Order price if the Seller fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Seller of notice of defects or nonconformance, to repay such portion of the Purchase Order price as is equitable under the circumstances if Buyer elects not to require correction or replacement. When supplies are returned to Seller, Seller shall bear the transportation cost from the original point of delivery to Seller's plant and return to the original point when that point is not the Seller's plant. If Seller fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, Buyer shall have the right by contract or otherwise to replace or correct such supplies and charge to Seller the cost occasioned Buyer thereby.

206. FAR 52.246-4, INSPECTION OF

SERVICES - FIXED PRICE

(AUG 1996) (MODIFIED)

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Seller shall provide and maintain an inspection system acceptable to the Buyer covering the services under this Purchase Order. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Buyer and/or the Government during Purchase Order performance and for as long afterwards as the Purchase Order requires.

(c) The Buyer and/or the Government have the right to inspect and test all services called for by the Purchase Order, to the extent practicable at all times and places during the term of the Purchase Order. The Buyer and/or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Buyer or the Government performs inspections or tests on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with Purchase Order requirements, the Buyer may require the Seller to perform the services again in conformity with Purchase Order requirements, at no increase in Purchase Order amount. When the defects in services cannot be corrected by reperformance, the Buyer may (1) require the Seller to take necessary action to ensure that future performance conforms to Purchase Order requirements; and (2) reduce the Purchase Order price to reflect the reduced value of the services performed.

(f) If the Seller fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, Buyer may

(1) by contract or otherwise, perform the services and charge to the Seller any cost incurred by the Buyer that is directly related to the performance of such service; or (2) terminate the Purchase Order for default.

207. FAR 52.246-17, WARRANTY OF SUPPLIES (BASED ON FAR 52.246-17 (APR 1984) (MODIFIED))

A. Definitions.

(1) "Acceptance," as used in this clause, means the act of an authorized representative of Buyer by which Buyer assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the Purchase Order.

(2) "Correction," as used in this clause, means the elimination of a defect.

(3) "Supplies," as used in this clause, means the end item furnished by Seller and related services required under the Purchase Order. The word does not include "data."

B. Seller's Obligations.

(1) Notwithstanding inspection and acceptance by Buyer of supplies furnished under this Purchase Order, or any condition of this Purchase Order concerning the conclusiveness thereof, Seller warrants that for a period of twelve (12) months after delivery thereof or until 9 months after acceptance by the U.S. Government of the vessel of which it is a component, whichever is later:

(a) all supplies furnished under this Purchase Order will be free from defects in material or workmanship and will conform with all requirements of this Purchase Order; and

(b) the supplies furnished hereunder, if of Seller's design, shall meet all of the performance requirements of this Order and be suitable for the purpose intended; and

(c) the preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this Purchase Order.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by Seller. However, Seller's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this Purchase Order and Seller's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph B.(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this Purchase Order.

C. Remedies Available to Buyer.

(1) Buyer shall give written notice to Seller of any breach of warranties in paragraph B.(1) of this clause within 45 days after discovery of the defect.

(2) Within a reasonable time after the notice, Buyer may either:

(a) require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this Purchase Order within the meaning of paragraph B.(1) of this clause; or

(b) retain such supplies and reduce the Purchase Order price by an amount equitable under the circumstances.

(3) (a) If the Purchase Order provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the Purchase Order. Buyer:

(i) may, for sampling purposes, group any supplies delivered under this Purchase Order;

(ii) shall require the size of the sample to be that required by sampling procedures specified in the Purchase Order for the quantity of supplies on which warranty action is proposed;

(iii) may project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(iv) need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(b) Within a reasonable time after notice of any breach of the warranties specified in paragraph B.(1) of this clause, Buyer may exercise one or more of the following options:

(i) require an equitable adjustment in the Purchase Order price for any group of supplies;

(ii) screen the supplies grouped for warranty action under this clause at Seller's expense and return all nonconforming supplies to Seller for correction or replacement;

(iii) require Seller to screen the supplies at locations designated by Buyer within the Continental United States and to correct or replace all nonconforming supplies; and

(iv) return the supplies grouped for warranty action under this clause to Seller (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4) (a) Buyer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to Seller the cost occasioned to Buyer thereby if Seller:

(i) fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(ii) fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.

(b) Instead of correction or replacement by Buyer, Buyer may require an equitable adjustment of the Purchase Order price. In addition, if Seller fails to furnish timely disposition instructions, Buyer may dispose of the nonconforming supplies for Seller's account in a reasonable manner. Buyer is entitled to reimbursement from Seller, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of Buyer provided in this clause are in addition to and do not limit any rights afforded to Buyer by any other clause of this Purchase Order.

208. FAR 52.246-20, WARRANTY OF SERVICES (APR 1984)

(MODIFIED)

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Buyer by which the Buyer assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the Purchase Order.

"Correction," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Buyer or any provision concerning the conclusiveness thereof, the Seller warrants that all services performed under this Purchase Order will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Purchase Order. The Buyer shall give written notice of any defect or nonconformance to the Seller within 45 days after discovery of the defect or nonconformance. This notice shall state either (1) that the Seller shall correct or reperform any defective or nonconforming services, or (2) that the Buyer does not require correction or reperformance.

(c) If the Seller is required to correct or reperform, it shall be at no cost to the Buyer, and any services corrected or reperformed by the Seller shall be subject to this clause to the same extent as work initially performed. If the Seller fails or refuses to correct or reperform, the Buyer may, by Purchase Order or subcontract or otherwise, correct or replace with similar services and charge to the Seller the cost occasioned to the Buyer thereby, or make an equitable adjustment in the Purchase Order price.

(d) If the Buyer does not require correction or reperformance, the Buyer shall make an equitable adjustment in the Purchase Order price.

209. FAR 52.249-2, TERMINATION FOR

CONVENIENCE (FIXED PRICE)

(SEP 1996) (MODIFIED)

A. Buyer may terminate performance of work under this Purchase Order in whole or, from time to time, in part if Buyer determines that a termination is in Buyer's or the Government's interest. Buyer shall terminate by delivering to the Seller a written notice of termination specifying the extent of termination and the effective date.

B. After receipt of a notice of termination, and except as directed by Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Purchase Order.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by Buyer, all right, title, and interest of the Seller under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by Buyer, transfer title to the Government and deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Purchase Order had been completed, would be required to be furnished to Buyer.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Purchase Order that is in the possession of the Seller and in which the Buyer or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (b)(6) above; provided, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Purchase Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

C. Seller shall submit complete termination inventory schedules, if required by Buyer, no later than 120 days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 120-day period.

D. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Buyer. The Seller may request Buyer to remove those items or enter into an agreement for their storage. Within 15 days, Buyer will accept title for the requirement to those items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

E. After termination, the Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Seller shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Buyer upon written request of the Seller within this 1-year period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

F. Subject to paragraph E. above, the Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph F. or paragraph G. below, exclusive of costs shown in subparagraph G.(3) below, may not exceed the total Purchase Order price as reduced by (1) the amount of payments previously made and (2) the Purchase Order price of work not terminated. The Purchase Order shall be amended, and the Seller paid the agreed amount. Paragraph G. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

G. If the Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay the Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on under paragraph F. above:

(1) The Purchase Order price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph B.(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of:

(a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph G.(1) above;

(b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Purchase Order if not included in subdivision G.(2)(a) above; and

(c) A sum, as profit on subdivision G.(2)(a) above, determined by Buyer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this Purchase Order, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss on the entire Purchase Order had it been completed, Buyer shall allow no profit under this subdivision G.(2)(c) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including:

(a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

H. Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to the Seller under paragraph G. above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

I. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Purchase Order, shall govern all costs claimed, agreed to, or determined under this clause.

J. DELETED

K. In arriving at the amount due the Seller under this clause, there shall be deducted:

(1) all unliquidated advance or other payments to the Seller under the terminated portion of this Purchase Order;

(2) any claim which Buyer has against the Seller under this Purchase Order; and

(3) the agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under the provision of this clause and not recovered by or credited to Buyer.

L. If the termination is partial, the Seller may file a proposal with Buyer for an equitable adjustment of the price(s) of the continued portion of the Purchase Order. Buyer shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Buyer.

M. (1) The Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Purchase Order, if the Buyer believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of

retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

M. Unless otherwise provided in this Purchase Order or by statute, the Seller shall maintain all records and documents relating to the terminated portion of this Purchase Order for 3 years after final settlement. This includes all books and other evidence bearing on the Seller's cost and expenses under this Purchase Order. The Seller shall make these records and documents available to the Government and Buyer, at the Seller's office, at all reasonable times, without any direct charge. If approved by Buyer's Purchasing Representative, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

210. FAR 52.249-8, DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)

Incorporated into this order by reference as if set forth in full.

301. FAR. 52.216-7, ALLOWABLE COST AND PAYMENT (MAR 1997)

MODIFIED

(Applies if this is a cost-reimbursement type purchase order (other than a facilities contract.) If this Purchase Order is with an educational institution, this clause is modified by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.3.")

Incorporated into this order by reference except that paragraph (d)(5) is deleted.

302. FAR 52.216-8, FIXED FEE (MAR 1997) MODIFIED

(Applies, as modified below to reflect the relationship of the parties, if this is contemplated to be a Cost Plus Fixed Fee type Purchase Order other than a facilities or construction contract.)

(a) The Buyer shall pay the Seller for performing this contract the fixed fee specified in this Purchase Order.

(b) Payment of the fixed fee shall be made as specified in the Purchase Order, provided that after payment of 85 percent of the fixed fee, the Buyer may withhold further payment of fee until a reserve is set aside in an amount that the Buyer considers necessary to protect the Buyer's and Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Buyer shall release 75 percent of all fee withholds under this Purchase Order after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this Purchase Order, provided the Seller has satisfied all other Purchase Order terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Buyer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

303. FAR 52.228-7, INSURANCE- LIABILITY TO THIRD PERSONS (MAR 1996) (PARTIAL) (MODIFIED)

(a) The Seller shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Buyer may require with respect to performance under this Purchase Order.

(1) The Seller may, with the approval of Buyer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Seller is qualified pursuant to statutory authority.

(2) All insurance required by this paragraph shall be in a form and amount and for such periods of time as the Buyer require or approve and with insurers approved by Buyer.

(b) The Seller agrees to submit for the Buyer's approval, to the extent and in the manner required by the Buyer, any other insurance that is maintained by the Seller in connection with the performance of this Purchase Order and for which the Seller seeks reimbursement hereunder.

(c) The Seller shall be reimbursed-

(1) For that portion (i) of the reasonable cost of insurance allocable to this Purchase Order, and (ii) required or approved under this clause.

(2) DELETED

(d)-(f) DELETED

(g) If any suit or action is filed or any claim is made against the Seller, the cost and expense of which may be reimbursable to the Seller under this Purchase Order, and the risk of which is then uninsured or is insured for less than the amount claimed, the Seller shall-

(1) Immediately notify the Buyer and promptly furnish copies of all pertinent papers received;

(2) Authorize Buyer and/or Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Buyer and/or Government representatives to settle or defend the claim and to represent the Seller in or to take charge of any litigation, if required by the Buyer or the Government, when the liability is not insured or covered by bond. The Seller may, at its own expense, be associated with the Buyer or Government representatives in any such claim or litigation.

304. FAR 52.232-7, PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 1997) (MODIFIED)

Buyer shall pay Seller as follows upon the submission of invoices or vouchers approved by Buyer:

A. Hourly Rate.

(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Purchase Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by Buyer), to Buyer or designee. Seller shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Buyer. Promptly after receipt of each substantiated voucher, Buyer shall, except as otherwise provided in this Purchase Order, and subject to the terms of E. below, pay the voucher as approved by Buyer.

(2) Unless otherwise prescribed in the Schedule, Buyer shall withhold 5 percent of the amounts due under this paragraph A., but the total amount withheld shall not exceed \$50,000. The amount withheld shall be retained until the execution and delivery of a release by the Seller as provided in paragraph F. below.

(3) Unless the Purchase Order prescribes otherwise, the hourly rates in the Purchase Order shall not be varied by virtue of the Seller having performed work on an overtime basis. If no overtime rates are provided in the Purchase Order and overtime work is approved in advance by Buyer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute. If the Purchase Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Buyer.

B. Materials and Subcontracts.

(1) Allowable costs of direct materials shall be determined by Buyer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Purchase Order. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with Seller's usual accounting practices consistent with Subpart 31.2 of the FAR. Seller shall be reimbursed for items and services purchased directly for the Purchase Order only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) The cost of subcontracts that are authorized under the subcontracts clause of this Purchase Order shall be reimbursable costs under this clause; provided, that the costs are consistent with subparagraph B.(3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the Purchase Order only when cash, checks, or other form of payment have been made for such purchased items or services; however, this requirement shall not apply to a Seller that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under A. (1) above.

(3) To the extent able, Seller shall:

(a) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(b) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, Seller shall promptly notify Buyer and give the reasons. Credit shall be given to Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commission, and other amounts that have *accrued* to the benefit of the Seller, or would have accrued except for the fault or neglect of Seller. The benefits lost without fault or neglect on the part of Seller, or lost through fault of Buyer, shall not be deducted from gross costs.

C. Total Cost.

It is estimated that the total cost to Buyer for the performance of this Purchase Order shall not exceed the ceiling price set forth in the Purchase Order and Seller agrees to use its best efforts to perform the work specified in the Purchase Order and all obligations under this Purchase Order within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Purchase Order in the next succeeding 30 days, if added to all other payments

and costs previously accrued, will exceed 85 percent of the ceiling price in the Purchase Order, Seller shall notify Buyer giving a revised estimate of the total price to Buyer for performing this Purchase Order with supporting reasons and documentation. If at any time during performing this Purchase Order, Seller has reason to believe that the total price to Buyer for performing this Purchase Order will be substantially greater or less than the then stated ceiling price, Seller shall so notify Buyer, giving a revised estimate of the total price for performing this purchase Order, with supporting reasons and documentation. If at any time during performing this Purchase Order, Buyer has reason to believe that the work to be required in performing this Purchase Order will be substantially greater or less than the stated ceiling price, Buyer's Authorized Representative will so advise Seller, giving the then revised estimate of the total amount of effort to be required under this Purchase Order.

D. Ceiling Price.

Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price in the Purchase Order, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Purchase Order, unless and until Buyer shall have notified Seller in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Purchase Order. When and to the extent that the ceiling price set forth in the Purchase Order has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

E. Audit.

At any time before final payment under this Purchase Order, Buyer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by Buyer *not* to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by Seller as the "completion voucher" or "completion invoice" and substantiating materials, and upon compliance by Seller with all terms of this Purchase Order (including, without limitation, terms relating to patents and the terms of F. and G. below), Buyer shall promptly pay any balance due to Seller. The completion invoice or voucher, and substantiating material, shall be submitted by Seller as promptly as practicable following completion of the work under this Purchase Order, but in no event later than 1 year (or such longer period as Buyer may approve in writing) from the date of completion.

F. Assignment.

Seller, and each assignee under an assignment entered into under this Purchase Order and in effect at the time of final payment under this Purchase Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Purchase Order, a release discharging the Government and Buyer, and their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Purchase Order, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by Seller.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of Seller to third parties arising out of performing this Purchase Order, that are not known to Seller on the date of the execution of the release, and of which the Seller gives notice in writing to Buyer not more than 6 years after the date of release or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of the Government and/or Buyer against patent liability), including reasonable incidental expenses, incurred by Seller under the terms of this Purchase Order relating to patents.

G. Refunds.

Seller agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by Seller or any assignee, that arise under the materials portion of this Purchase Order and for which Seller received reimbursement, shall be paid by Seller to Buyer. Seller and each assignee, under an assignment entered into under this Purchase Order and in effect at the time of final payment under this Purchase Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Purchase Order, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to Buyer.

305. FAR 52.232-20, LIMITATION OF COST (APR 1984) (MODIFIED)

(This clause applies if a fully funded cost-reimbursement Purchase Order is contemplated.)

A. The parties estimate that performance of this Purchase Order, exclusive of any fee, will not cost Buyer more than (1) the estimated cost specified in the Purchase Order or, (2) if this is a cost-sharing Purchase Order, Buyer's share of the estimated cost specified in the Purchase Order. Seller agrees to use its best efforts to perform the work specified in the Purchase Order and all obligations under this Purchase Order within the estimated cost, which, if this is a cost-sharing Purchase Order, includes both Buyer's and the Seller's share of the cost.

B. Seller shall notify Buyer's Authorized Representative in writing whenever it has reason to believe that:

(1) The costs Seller expects to incur under this Purchase Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Purchase Order; or

(2) The total cost for the performance of this Purchase Order, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

C. As part of the notification, Seller shall provide a revised estimate of the total cost of performing this Purchase Order.

D. Except as required by other provisions of this Purchase Order, specifically citing and stated to be an exception to this clause:

(1) Buyer is not obligated to reimburse Seller for costs incurred in excess of (a) the estimated cost specified in the Purchase Order or, (b) if this is a cost-sharing Purchase Order, the estimated cost to Buyer specified in this Purchase Order; and

(2) Seller is not obligated to continue performance under this Purchase Order (including actions under the "Termination" clause of this Purchase Order) or otherwise incur costs in excess of the estimated cost specified in the Purchase Order, until Buyer's Authorized Representative (a) notifies Seller in writing that the estimated cost has been increased and (b) provides a revised estimated total cost of performing this Purchase Order. If this is a cost-sharing Purchase Order, the increase shall be allocated in accordance with the formula specified in the Purchase Order.

E. No notice, communication, or representation in any form other than that specified in subparagraph D.(2) above, or from any person other than Buyer's Authorized Representative, shall affect this Purchase Order's estimated cost to Buyer. In the absence of the specified notice, Buyer is not obligated to reimburse Seller for any costs in excess of the estimated cost or, if this is a cost-sharing Purchase Order, for any costs in excess of the estimated cost to Buyer specified in the Purchase Order, whether those excess costs were incurred during the course of the Purchase Order or as a result of termination.

F. If the estimated cost specified in the Purchase Order is increased, any costs Seller incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless Buyer's Authorized Representative issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

G. Change Orders shall not be considered an authorization to exceed the estimated cost to Buyer specified in the Purchase Order, unless they contain a statement increasing the estimated cost.

H. If this Purchase Order is terminated or the estimated cost is not increased, Buyer and Seller shall negotiate an equitable distribution of all property produced or purchased under the Purchase Order, based upon the share of costs incurred by each.

306. FAR 52.232-22, LIMITATION OF FUNDS (APR 1984) (MODIFIED)

(This clause applies if an incrementally

funded Cost-Reimbursement Purchase

Order is contemplated.)

A. The parties estimate that performance of this Purchase Order, will not cost Buyer more than (1) the estimated cost specified in the Purchase Order or, (2) if this is a cost-sharing Purchase Order, Buyer's share of the estimated cost specified in the Purchase Order. Seller agrees to use its best efforts to perform the work specified in the Purchase Order and all obligations under this Purchase Order within the estimated cost, which, if this is a cost-sharing Purchase Order, includes both Buyer's and the Seller's share of the cost.

B. The Purchase Order specifies the amount presently available for payment by Buyer and allotted to this Purchase Order, the items covered, Buyer's share of the cost if this is a cost-sharing Purchase Order, and the period of performance it is estimated that the allotted amount will cover. The parties contemplate that Buyer will allot additional funds incrementally to the Purchase Order up to the full estimated cost specified in the Purchase Order, exclusive of any fee. Seller agrees to perform, or have performed, work on the Purchase Order up to the point at which the total amount paid and payable by Buyer under the Purchase Order approximates but does not exceed the total amount actually allotted by Buyer to the Purchase Order.

C. Seller shall notify Buyer's Authorized Representative in writing whenever it has reason to believe that the cost it expects to incur under this Purchase Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the Purchase Order by Buyer or, (2) if this is a cost-sharing Purchase Order, the amount then allotted to the Purchase Order by Buyer plus the Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Purchase Order.

D. Sixty days before the end of the period specified in the Purchase Order, Seller shall notify Buyer's Authorized Representative in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Purchase Order or for any further period specified in the Purchase Order or otherwise agreed upon, and when the funds will be required.

E. If, after notification, additional funds are not allotted by the end of the period specified in the Purchase Order or another agreed-upon date, upon Seller's written request Buyer's Authorized Representative will terminate this Purchase Order on that date in accordance with the provisions of the "Termination" clause of this Purchase Order. If Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and Buyer's Authorized Representative may terminate this Purchase Order on the later date.

F. Except as required by other provisions of this Purchase Order, specifically citing and stated to be an exception to this clause:

(1) Buyer is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted by Buyer to this Purchase Order; and

(2) Seller is not obligated to continue performance under this contract (including actions under the "Termination" clause of this Purchase Order) or otherwise incur costs in excess of (a) the amount then allotted to the Purchase Order by Buyer or, (b) if this is a cost-sharing Purchase Order, the amount then allotted by Buyer to the Purchase Order plus the Seller's corresponding share, until Buyer's Authorized Representative notifies Seller in writing that the amount allotted by Buyer has been increased and specifies an increased amount, which shall then constitute the total amount allotted by Buyer to this Purchase Order.

G. The estimated cost shall be increased to the extent that (1) the amount allotted by Buyer or, (2) if this is a cost-sharing Purchase Order, the amount then allotted by Buyer to the Purchase Order plus the Seller's corresponding share, exceeds the estimated cost specified in the Purchase Order. If this is a cost-sharing Purchase Order, the increase shall be allotted in accordance with the formula specified in the Purchase Order.

H. No notice, communication, or representation in any form other than that specified in subparagraph F.(2) above, or from any person other than Buyer's Authorized Representative, shall affect the amount allotted by Buyer to this Purchase Order. In the absence of the specified notice, Buyer is not obligated to reimburse Seller for any costs in excess of the total amount allotted by Buyer to this Purchase Order, whether incurred during the course of the Purchase Order or as a result of termination.

I. When and to the extent that the amount allotted by Buyer to the contract is increased, any costs Seller incurred before the increase that are in excess of (1) the amount previously allotted by Buyer or, (2) if this is a cost-sharing Purchase Order, the amount previously allotted by Buyer to the Purchase Order plus Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless Buyer's Authorized Representative issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

J. Change Orders shall not be considered an authorization to exceed the amount allotted by Buyer specified in the Purchase Order, unless they contain a statement increasing the amount allotted.

K. Nothing in this clause shall affect the right of Buyer to terminate this Purchase Order. If this Purchase Order is terminated, Buyer and Seller shall negotiate an equitable distribution of all property produced or purchased under the Purchase Order, based upon the share of costs incurred by each.

L. If Buyer does not allot sufficient funds to allow completion of the work, Seller is entitled to a percentage of the fee specified in the Purchase Order equaling the percentage of completion of the work contemplated by this Purchase Order.

307. FAR 52.243-2, CHANGES - COST-REIMBURSEMENT (AUG 1987)

& ALT II (APR 1984) (MODIFIED)

(Applies to other than Time and Materials or Labor Hours type Purchase Orders.)

A. Buyer may at any time, by written Order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Buyer or Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this Purchase Order, whether or not changed by the Order, or otherwise affects any other terms and conditions of this Purchase Order, Buyer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Purchase Order accordingly.

C. The Seller must assert its right to an adjustment under this clause within 20 days from the date of receipt of the written Order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the Purchase Order.

D. Failure to agree to any adjustment shall be a dispute. However, nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.

E. Notwithstanding the terms and condition of paragraphs A. and B. above, the estimated cost of this Purchase Order and, if this Purchase Order is incrementally funded, the funds allotted for the performance of this Purchase Order, shall not be increased or considered to be increased except by specific written modification of the Purchase Order indicating the new Purchase Order estimated cost and, if this Purchase Order is incrementally funded, the new amount allotted to the Purchase Order. Until this modification is made, the Seller shall not be obligated to continue performance or incur cost beyond the point established in the "Limitation of Cost" or "Limitation of Funds" clause of this Purchase Order.

Alternate II (MODIFIED). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing.
- (6) Inspection standards.
- (7) Place or time of inspection, delivery or acceptance.

308. FAR 52.243-3, CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987) (MODIFIED)

(This clause applies if this is a Time-and-Material or Labor Hour type purchase order.)

A. Buyer may at any time, by written Order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order in any one or more of the following:

- (1) Drawings, designs, or specifications.
- (2) Method of shipment or packing
- (3) Place of delivery
- (4) Amount of Government-furnished property.

B. If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Purchase Order, whether or not changed by the Order, or otherwise affects any other terms and conditions of this Purchase Order, Buyer shall make an equitable adjustment in the (1) ceiling

price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms, and shall modify the Purchase Order accordingly.

C. The Seller must assert its right to an adjustment under this clause within 20 days from the date of receipt of the written Order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the Purchase Order.

D. Failure to agree to any adjustment shall be a dispute. However, nothing in this clause shall excuse Seller from proceeding with the Purchase Order as changed.

309. FAR 52.245-5, GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986)

(MODIFIED)

(a) Government-furnished property.

(1) The term "Seller's managerial personnel," as used in paragraph (g) of this clause, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(i) All or substantially all of the Seller's business;

(ii) All or substantially all of the Seller's operation at any one plant, or separate location at which the purchase order is being performed; or

(iii) A separate and complete major industrial operation connected with performing this Purchase Order.

(2) The Buyer shall deliver to the Seller, for use in connection with and under the terms of this Purchase Order, the Government-furnished property described in the order or specifications, together with such related data and information as the Seller may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this Purchase Order are based upon the expectation that Government-furnished property suitable for use will be delivered to the Seller at the times stated in the order or, if not so stated, in sufficient time to enable the Seller to meet the Purchase Order's delivery or performance dates.

(4) If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt, notify the Buyer, detailing the facts, and, as directed by the Buyer and at Buyer's expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the Buyer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Seller by the required time or times, the Buyer shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Buyer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this Purchase Order or (ii) substitute other Government-furnished property for the property to be provided by the Buyer or to be acquired by the Seller for the Government under this order. The Seller shall promptly take such action as the Buyer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Seller's written request, the Buyer shall make an equitable adjustment to the Purchase Order in accordance with paragraph (h) of this clause, if the Buyer has agreed in the order to make such property available for performing this Purchase Order and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other order or lease.

(c) Title.

(1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Seller for which the Seller is entitled to be reimbursed as a direct item of cost under this Order shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Seller, shall pass to and vest in the Government upon--

(i) Issuance of the property for use in order performance;

(ii) Commencement of processing of the property for use in order performance; or

(iii) Reimbursement of the cost of the property by the Buyer or the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identify as personal property by being attached to any real property.

No items of facilities may be acquired under this purchase order for the account of the Government without prior written Buyer approval.

(d) Use of Government property.

The Government property shall be used only for performing this order, unless otherwise provided in this contract or approved by the Buyer.

(e) Property administration.

(1) The Seller shall be responsible and accountable for all Government property provided under the order and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this Purchase Order.

(2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Buyer or the Government under this order, the Buyer shall replace the items or the Seller shall make such repairs as the Buyer directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Buyer. When any property for which the Government is responsible is replaced or repaired, the Buyer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access. The Government and Buyer and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of Loss. (NOTE: Revised per (g)(4) below.)

(1) Seller assumes all risk of, and shall be responsible for, any loss or destruction of, or damage to, the property while in the Seller's or its subcontractor's possession or control, unless the Seller has requested and received written or higher-tier relief from such liability as provided for in paragraph (g)(4). Seller shall return all government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the Buyer's Prime Contract.

(2) Not Used

(3) Not Used

(4) If the Seller transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Seller for loss or destruction of, or damage to, the property as set forth above. However, the Seller shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Buyer's Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this order, the Seller shall so notify the Buyer and shall communicate with the loss and salvage organization, if any, designated by the Buyer. With the assistance of any such organization, the Seller shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Buyer a statement of--

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Seller shall repair, renovate, and take such other action with respect to damaged Government property as the Buyer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Seller's) that separation is impractical, the Seller may, with the approval of and subject to any conditions imposed by the Buyer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Seller shall be entitled to an equitable adjustment in the order price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Buyer or Government may directly reimburse the loss and salvage organization for any of their charges. The Buyer shall give due regard to the Seller's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Seller shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Buyer may have expressly required the Seller to carry such insurance under another provision of this order.

(8) In the event the Seller is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Seller shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Buyer.

(9) The Seller shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Buyer, the Seller shall, at the Buyer's expense, furnish to the Buyer or Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Seller shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected Purchase Order provision in accordance with the procedures of the Changes clause. When appropriate, the Buyer may initiate an equitable adjustment in favor of the Buyer or Government. The right to an equitable adjustment shall be the Seller's exclusive remedy. Neither the Government nor Buyer shall be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property ; or

(4) Failure to repair or replace Government property for which the Buyer is responsible.

(i) Final accounting and disposition of Government property. Upon completing this Purchase Order, or at such earlier dates as may be fixed by the Buyer, the Seller shall submit, in a form acceptable to the Buyer, inventory schedules covering all items of Government property not consumed in performing this order or delivered to the Buyer or Government. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Buyer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this order or paid to the Government as directed by the Buyer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Buyer may authorize or direct the Seller to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Seller's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Seller's established accounting procedures.

(j) Abandonment and restoration of Seller's premises. Unless otherwise provided herein, the Government or Buyer--

(1) May abandon any Government property in place, at which time all obligations of the Government or Buyer regarding such abandoned property shall cease; and

(2) Have no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or order completion). However, if the Government-furnished property (listed in the order or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished", respectively.

310. FAR 52.246-3, INSPECTION OF SUPPLIES - COST-REIMBURSEMENT (APR 1984) (MODIFIED)

A. Definitions.

(1) "Seller's managerial personnel," as used in this clause, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

(a) all or substantially all of the Seller's business;

(b) all or substantially all of the Seller's operation at a plant or separate location at which the Purchase Order is being performed; or

(c) a separate and complete major industrial operation connected with performing this Purchase Order.

(2) "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the Purchase Order does not include the "Warranty of Data" clause, data.

B. The Seller shall provide and maintain an inspection system acceptable to Buyer and the Government covering the supplies, fabricating methods, and special tooling under this Purchase Order. Complete records of all inspection work performed by the Seller shall be maintained and made available to Buyer and/or Government during Purchase Order performance and for as long afterwards as the Purchase Order requires.

C. Buyer and/or the Government have the right to inspect and test the Purchase Order supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. Buyer and/or the Government may also inspect the plant or plants of the Seller or any subcontractor engaged in the Purchase Order performance. Buyer or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

D. If Buyer or the Government performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E. Unless otherwise specified in the Purchase Order, Buyer shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

F. At any time during Purchase Order performance, but no later than 6 months (or such other time as may be specified in the Purchase Order) after acceptance of the supplies to be delivered under the Purchase Order, Buyer may require the Seller to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Purchase Order requirements. Except as otherwise provided in paragraph H. below, the cost of replacement or correction shall be included in allowable costs, determined as provided in the "Allowable Cost and Payment" clause, but no additional fee shall be paid. Seller shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

G. (1) If the Seller fails to proceed with reasonable promptness to perform required replacement or correction, Buyer may:

(a) by Purchase Order or otherwise, perform the replacement or correction and charge to the Seller any increased cost or make an equitable reduction in any fixed fee paid or payable under the Purchase Order;

(b) require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the Purchase Order; or

(c) terminate the Purchase Order for default.

(2) Failure to agree on the amount of increased cost to be charged to the Seller or to the reduction in the fixed fee shall be a dispute.

H. Notwithstanding paragraphs F. and G. above, Buyer may at any time require the Seller to correct or replace, without cost to Buyer, nonconforming supplies, if the

nonconformances are due to (1) fraud, lack of good faith, or willful misconduct on the part of the Seller's managerial personnel or (2) the conduct of one or more of the Seller's employees selected or retained by the Seller after any of the Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

I. This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

J. The Seller shall have no obligation or liability under this Purchase Order to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the Purchase Order.

K. Except as otherwise specified in the Purchase Order, the Seller's obligation to correct or replace Buyer-furnished property or Government property, shall be governed by the clauses pertaining to Buyer-Furnished Tooling and Material (property) and/or Government property.

311. FAR 52.246-5, INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984) (MODIFIED)

A. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

B. Seller shall provide and maintain an inspection system acceptable to Buyer and the Government covering the services under this Purchase Order. Complete records of all inspection work performed by the Seller shall be maintained and made available to Buyer and the Government during Purchase Order performance and for as long afterwards as the Purchase Order requires.

C. Buyer and/or Government have the right to inspect and test all services called for by the Purchase Order, to the extent practicable at all places and times during the term of the Purchase Order. Buyer or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

D. If any of the services performed do not conform with Purchase Order requirements, Buyer may require the Seller to perform the services again in conformity with purchase Order requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, Buyer may (1) require the Seller to take necessary action to ensure that future performance conforms to Purchase Order requirements and (2) reduce any fee payable under the Purchase Order to reflect the reduced value of the services performed.

E. If Seller fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Purchase Order requirements, Buyer may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances, or (2) terminate the Purchase Order for default.

312. FAR 52.246-6, INSPECTION - TIME - MATERIAL AND LABOR HOUR

(JAN 1986) (MODIFIED)

A. (1) "Seller's managerial personnel," as used in this clause, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

(a) all or substantially all of the Seller's business;

(b) all or substantially all of the Seller's operation at any one plant or separate location at which the Purchase Order is being performed; or

(c) a separate and complete major industrial operation connected with the performance of this Purchase Order.

(2) "Materials," as used in this clause, includes data when the Purchase Order does not include the "Warranty of Data" clause.

B. Seller shall provide and maintain an inspection system acceptable to Buyer and the Government covering the material, fabricating methods, work, and services under this Purchase Order. Complete records of all inspection work performed by the Seller shall be maintained and made available to Buyer and/or Government during Purchase Order performance and for as long afterwards as the Purchase Order requires.

C. Buyer and/or the Government have the right to inspect and test all materials furnished and services performed under this Purchase Order, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. Buyer and/or the Government may also inspect the plant or plants of the Seller or any subcontractor engaged in Purchase Order performance. Buyer and/or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

D. If Buyer or the Government performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E. Unless otherwise specified in the Purchase Order, Buyer shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

F. At any time during Purchase Order performance, but not later than 6 months (or such other time as may be specified in the Purchase Order) after acceptance of the services or materials last delivered under this Purchase Order, Buyer may require Seller to replace or correct services or materials that at time of delivery failed to meet Purchase Order requirements. Except as otherwise specified in paragraph H. below, the cost of replacement or correction shall be determined under the "Payments Under Time-and-Materials and Labor-Hour Contracts" clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Seller shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and when required, shall disclose the corrective action taken.

G. (1) If Seller fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Buyer), Buyer may:

(a) by contract or otherwise, perform the replacement or correction, charge to the Seller an increased cost, or deduct such increased cost from any amounts paid or due under this Purchase Order; or

(b) terminate this Purchase Order for default.

(2) Failure to agree to the amount of increased cost to be charged to the Seller shall be a dispute.

H. Notwithstanding paragraphs F. and G. above, Buyer may at any time require Seller to remedy by correction or replacement, without cost to the Buyer, any failure by the Seller to comply with the requirements of this Purchase Order, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Seller's managerial personnel or (2) the conduct of one or more of the Seller's employees selected or retained by the Seller after any of the Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

I. This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Purchase Order.

J. DELETED

K. Unless otherwise specified in the purchase order, the Seller's obligation to correct or replace Buyer-furnished property or Government-furnished property shall be governed by the clauses pertaining to Buyer-furnished tooling and material (property) and/or Government property.

313. FAR 52.249-6, TERMINATION (COST-REIMBURSEMENT) (SEP 1996) AND (T&M AND LH) ALT IV (SEP 1996) (MODIFIED)

A. Buyer may terminate performance of work under this Purchase Order in whole or, from time to time, in part, if:

(1) Buyer determines that a termination is in Buyer's or the Government's interest; or

(2) the Seller defaults in performing this Purchase Order and fails to cure the default within 10 days (unless extended by Buyer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

B. Buyer shall terminate by delivering to the Seller a "Notice of Termination" specifying whether termination is for default of the Seller or for convenience of Buyer or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default, or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller as set forth in the "Excusable Delays" clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of Buyer or the Government.

C. After receipt of a "Notice of Termination," and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the Purchase Order.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Buyer and/or the Government, as directed by Buyer, all rights, title, and interest of the Seller under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Purchase Order; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred and, as directed by Buyer, deliver to Buyer (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; (b) the completed or partially completed plans, drawings, information, and other property that, if the purchase order had been completed would be required to be furnished to Buyer and/or the Government; and (c) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Seller has been or will be reimbursed under this Purchase Order.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Purchase Order that is in the possession of the Seller and in which Buyer has or may acquire an interest.

(9) Use its best efforts to sell as directed or authorized by Buyer, any property of the types referred to in subparagraph C.(6) above; provided, however, that the Seller (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Purchase Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

D. Seller shall submit complete termination inventory schedules, if required by Buyer, no later than 120 days from the effective date of termination, unless extended in writing by the Buyer upon written request of the Seller within this 120-day period.

E. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Seller may submit to the Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Buyer. The Seller may request the Buyer to remove those items or enter into an agreement for their storage. Within 30 days, the Buyer will accept the items and remove them or enter into a storage agreement. The Buyer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

F. After termination, the Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Seller shall submit the proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by Buyer upon written request of the Seller within this six (6) month period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received, and acted on after 6 months or any extension. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

G. Subject to paragraph F. above, the Seller and Buyer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Purchase Order shall be amended, and the Seller paid the agreed amount.

H. If the Seller and Buyer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this Purchase Order, not previously paid, for the performance of this Purchase Order before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by Buyer; however, the Seller shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Purchase Order if not included in subparagraph H.(1) above.

(3) The reasonable costs of settlement of the work terminated, including:

(a) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(b) the termination and settlement of subcontracts (excluding the amounts of such settlements); and

(c) storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under the Purchase Order, determined as follows:

(a) If the Purchase Order is terminated for the convenience of the Buyer or the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Purchase Order, but excluding subcontract effort included in subcontractor's termination proposals, less previous payments for fee.

(b) If the Purchase Order is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Buyer is to the total number of articles (or amount of services) of a like kind required by the Purchase Order.

(5) If the settlement includes only fee, it will be determined under subparagraph H.(4) above.

I. The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Purchase Order, shall govern all costs claimed, agreed to, or determined under this clause.

J. DELETED

K. In arriving at the amount due the Seller under this clause, there shall be deducted:

(1) all unliquidated advance or other payments to the Seller, under the terminated portion of this Purchase Order;

(2) any claim which Buyer has against the Seller under this Purchase Order; and

(3) the agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this clause and not recovered by or credited to Buyer.

L. The Seller and Buyer must agree to any equitable adjustment in fee for the continued portion of the Purchase Order when there is a partial termination. Buyer shall amend the Purchase Order to reflect the agreement.

M. (1) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Purchase Order, if Buyer believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

N. The provisions of this clause relating to fee are inapplicable if this Purchase Order does not include a fee.

ALT IV (SEP 1996) (If this Purchase Order is a time-and-material or labor-hour contract, substitute the following paragraphs H. AND L. for paragraphs H. and L. of the basic clause):

H. If the Seller and Buyer fail to agree in whole or in part on the amount to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due Seller, and shall pay the amount determined as follows:

(1) If the termination is for the convenience of Buyer or the Government, include:

(a) an amount for direct labor hours (as defined the Purchase Order) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the order, less any hourly rate payments already made to Seller;

(b) an amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to Seller;

(c) an amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by Buyer; however, Seller shall discontinue these expenses as rapidly as practicable;

(d) if not included in H.(1) (a), (b), or (c) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Purchase Order; and

(e) the reasonable costs of settlement of work terminated, including:

(i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) the termination and settlement of subcontracts (excluding the amounts of such settlement); and

(iii) storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of Seller, include the amounts computed under subparagraph H.(1) above but omit:

(a) any amount for preparation of Seller's termination settlement proposal; and

(b) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by Buyer.

L. If the termination is partial, Seller may file with Buyer a proposal for an equitable adjustment of the price(s) for the continued portion of the Purchase Order. Buyer shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by Buyer.

314. FAR 52.249-14, EXCUSABLE DELAYS (APR 1984)

Incorporated into this order by reference as if set forth in full.

315. GUARANTEE (COST-REIMBURSEMENT ORDERS)

Seller guarantees that all goods and services provided under this Purchase Order: (i) conform to all of the requirements of this Purchase Order, (ii) are new and of good quality; (iii) are free from defects in material and workmanship; and (iv) are of adequate size and capacity to fulfill all operating conditions specified in the Purchase Order. The guarantee period shall begin upon Purchaser's acceptance of the goods or services and end nine (9) months after acceptance by the U. S. Government of the vessel for which the goods or services were purchased. Purchaser will promptly notify Seller of possible deficiencies that arise during the guarantee period. For all deficiencies that arise during the guarantee period, Seller shall promptly remedy the deficiency for no additional fee. If Seller cannot remedy the deficiency, Purchaser may, at its option, remedy the deficiency by contract or otherwise and charge to the Seller any increased costs or make an equitable reduction in any fixed fee paid or payable under the Purchase Order. In computing the guarantee period, there shall be excluded any time that a good delivered under this Purchase Order is prevented from entering service or is taken out of service on account of any guarantee deficiency. This guarantee shall inure to the benefit of Purchaser and Purchaser's customer.

Appendix A-EB/NNS-NSSN (REV. 1/99)