**Special Provision-Performance Based Milestone Payments**

The use of Performance Based Milestone Payments (hereinafter referred to as milestones) requires the final milestone to be set at 10% of the purchase order value and the criteria to be, or include, receipt and acceptance of the contract product(s) by Ingalls. No additional retention will be held.

This special provision is extended by the Buyer as a privilege and should not be construed as a right of Seller. This special provision is intended to limit the financial exposure of the Seller, during the manufacturing, testing and delivery of the contract products. This special provision applies even though the Seller has not made delivery of said contract products to the Buyer nor completed the work required on the contract products with respect thereto.

The general guidelines and definitions along with additional special provisions applicable to the purchase order, are presented below.

**Performance-Based Milestone Payments**

**Definition:** In accordance with FAR 32.10 and DFARS 232.10, except as amended herein. Payment is made based upon either specifically described events (e.g., milestones) or some measureable criterion of performance mutually agreed upon by the Subcontract Administrator/Procurement Analyst and Seller.

Guidelines:

1. **Establishing payment plan:**

* Each milestone shall be established at a value that is commensurate with the suppliers cost required to accomplish the milestone. Each milestone shall be established based on actual tangible events and shall not be based on the passage of time or an arbitrary event such as, but not limited to, contract signing, material ordering, etc.
* Total payments prior to receipt and acceptance of contract products shall not exceed 90% of the individual contract product price (if on a per item basis) or 90% of the purchase order price (if on entire order price basis).

1. **Payments:**

* Seller shall execute and provide the certification, on page 4 of this special provision, with each invoice. Any adverse response to the statements may result in non-payment of the milestone.
* Payments will be made based upon 100% successful completion of each milestone and partial payments will not be made for incomplete milestones.
* Seller will provide evidence of successful completion of each milestone, as required. Examples include photographs, copies of paid invoices for receipt of raw materials, Buyer site visits, etc. Buyer reserves the right to audit Seller at any time during the performance period to ensure that Seller has completed the milestones claimed.

**Additional Provisions**

**Reduction or Suspension of Payments** - Buyer may reduce or suspend progress payments whenever Buyer finds that Seller has failed to comply with any material requirement of this purchase order; has so failed to make progress, or is in such unsatisfactory financial condition as to endanger performance of this purchase order; has allocated inventory to this purchase order substantially exceeding reasonable requirements; is delinquent in payment of the costs of performance of this purchase order in the ordinary course of business; does not have costs that are commensurate with the amount paid against this purchase order.

**Insurance** – In addition to any other insurance requirements invoked in this Order, a certificate of property insurance will be required to be submitted to the cognizant Subcontract Administrator/ Procurement Analyst no later than 30 days after issuance of this Order or 15 days prior to any payment. Additionally, the insurance certificate shall be reviewed and approved by the Subcontract Administrator/Procurement Analyst and Buyer Risk Management.  The insurance certificate shall be sent to Buyer by the insurance agent and not by Seller; the intent is to ensure that the certificate is valid and that the insuring agency is aware of how to contact Buyer in the future should the certificate be cancelled for any reason.  Should Buyer not receive the certificate of property insurance within 30 days after issuance of this Order, Seller will not be paid for any invoices related to this Order and payments may also be suspended on any other purchase orders issued to Seller until the insurance provisions have been satisfied.

Seller agrees to keep all Contract Products insured until delivery of said products to Buyer. Insurance on the contract products shall be, at a minimum, the amount of the total purchase order price, including all changes. Said insurance policy or policies shall be delivered to the Subcontract Administrator/Procurement Analyst and shall state that all losses thereunder shall be paid to the Government and/or Buyer, or order for distribution to the Government, Buyer, and Seller as their respective interests shall appear.

The insurance certificate, provided by the insurance agent, shall include, at a minimum, the purchase order number, coverage dollar amount, effective dates of coverage, policy number, Buyer and the U.S. Government listed as loss payees, and a written 30-day notice of cancellation on the certificate insurance certificate shall also state that the seller agrees to a waiver of subrogation. Failure to furnish such insurance policy or policies shall constitute failure to perform a provision of this Order for which this Order will be terminated.

Seller agrees to defend, indemnify and hold harmless Buyer, and all agents and associates thereof from any loss or damage to the Contract Products from any and all causes, including but not limited to theft, transportation hazards, vandalism, fire, wind, water, and lightening, until the Contract Products are delivered to Buyer in accordance with the terms of this purchase order or at a place designated by the Subcontract Administrator/Procurement Analyst.

Seller will furnish insurance for transit coverage if shipment is arranged by Seller or F.O.B. Ingalls Shipbuilding. Should Seller be underinsured for any reason whatsoever, Seller shall hold Buyer harmless in regards to any type of cost recovery by Seller, regardless of the type of contract issued by Buyer to Seller.

**Backcharges** - If upon being notified by Buyer of deficient work or materials, and having been directed to correct the deficient work or materials by a specific date consistent with the current project schedule, Seller states or by its actions/inactions indicates its inability or unwillingness to comply, then Buyer shall proceed to accomplish the work by the most expeditious means available to it and to back charge Seller for the cost of the required work. The parties agree that such cost shall be established at the Buyer’s fully-burdened production or engineering hourly rate (as appropriate) utilizing the then current Government-approved rate set authorized for change-order activity. In addition, Buyer may set-off any amount(s) due from Seller to Buyer, liquidated or un-liquidated, against payments due to Seller under this or any other Order.

**Performance Based Milestone Payment Request & Certification**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Purchase Order No.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Invoice No.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Suppliers Contract No.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Buyer Name

Please accept this invoice for milestone number \_\_\_\_\_ in the amount $\_\_\_\_\_\_\_\_\_\_\_\_ for

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Description of Milestone)

I certify to the best of my knowledge and belief that-

(1) This request for payment of a performance-based milestone is true and correct; this request (and attachments) has been prepared from the books and records of the Seller, in accordance with the purchase order terms and conditions.

(2) As of the date of this request for payment, all payments to subcontractors and suppliers under this purchase order have been paid, or will be paid, currently, when due in the ordinary course of business, except as reported herein.

(3) As of the date of this request, there are no liens or encumbrances against the property acquired or produced for, and allocated or properly chargeable to, the purchase order which would affect or impair the buyers and the Government's title, except as reported herein.

(4) There has been no materially adverse change in the financial condition of the Seller since the submission of cost and/or pricing data to the Buyer or since receiving the aforementioned purchase order from the Buyer, except as reported herein.

(5) After the making of this requested performance based milestone payment, the amount of all payments for each deliverable item for which performance based milestone payments have been requested will not exceed the Sellers total cost required to manufacture, test and deliver the contract product(s).

Exceptions from above:

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Name (Print)

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Sign and Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title