

**Pacific Ship Repair & Fabrication, Inc.**

**Purchase Order  
Terms and Conditions**

**Purchase Order Terms & Conditions**  
**Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

Clause	Page
1. Acceptance . . . . .	3
2. Definitions . . . . .	3
3. Obligations Under Prime Contract . . . . .	4
4. Performance and Delivery . . . . .	4
5. Packing and Shipping . . . . .	5
6. Warranty . . . . .	5
7. Infringement Indemnity . . . . .	6
10. Insurance Requirements for Subcontractor Bidding Eligibility . . . . .	10
11. Indemnity . . . . .	11
12. Payment . . . . .	11
13. Setoff and Withholding . . . . .	11
14. Non-Assignment . . . . .	12
15. Liens . . . . .	12
16. Consequential Damage . . . . .	12
17. Non-waiver . . . . .	12
18. Customer Property . . . . .	12
19. Buyer-Furnished Property . . . . .	13
21. Technical Manuals . . . . .	13
22. Provisioning Technical Documentation (PTD) . . . . .	13
23. Specification . . . . .	13
24. Workmanship and Materials . . . . .	13
25. Inspection and Test . . . . .	14
26. Hazardous Waste . . . . .	14
27. Hazardous Material Identification . . . . .	15
28. Subcontracts . . . . .	15
29. Other Contracts . . . . .	15
30. Independent Contractor . . . . .	15
31. Incorporation of Clauses by Reference . . . . .	16
FAR Section Title/Description . . . . .	16
DFARS Section Title/Description . . . . .	22
32. Changes . . . . .	25
33. Termination for Default . . . . .	26
34. Disputes . . . . .	27
37. Release of Information . . . . .	29
38. Anti-Kickback Act, Business Conduct and Ethics, Debarment and Suspension . . . . .	29
39. Option . . . . .	32
40. Severability . . . . .	32
41. Entire Agreement . . . . .	33

**Pacific Ship Repair & Fabrication, Inc.  
Purchase Order Terms and Conditions**

**1. Acceptance**

These terms and conditions, together with any addendum attached hereto, the Purchase Order, and any Representations and Certifications made by Seller, constitute the entire agreement between Buyer and Seller, merge and supersede all communications, written or oral, prior to or contemporaneous with any Order, and shall not be subject to variation irrespective of any wording in Seller's acceptance. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to by the Buyer in supplemental contract form. Any Order becomes a binding contract when accepted by Seller, either by acknowledgment or commencement of performance.

**2. Definitions**

The following definitions apply unless otherwise specifically stated:

**Article** - An item of the Order

**Buyer** - Pacific Ship Repair & Fabrication, Inc. (hereinafter referred to as "PACSHIP").

**Contracting Officer** - The Government Contracting Officer for the Prime Contract or authorized representative.

**DFARS** - The Department of Defense FAR Supplement

**FAR** - The Federal Acquisition Regulation

**Government** - The Government of the United States, including its Federal Agencies

**Order** - A written order signed by the Buyer's Agent, the Purchase Order

**Prime Contractor** - The holder of the Government contract under which the Order is issued

**Seller** - The legal entity which contracts with the Buyer to provide goods or services

**3. Obligations Under Prime Contract**

If the face of an Order includes identification of a prime contract, the goods or services (or both) ordered are procured in furtherance of Buyer's performance of Buyer's prime contract with its customer. Such prime contracts may include, but not limited to, Job Orders issued under Buyer's Master Agreement for Repair and Alteration of Vessels with agencies of the United States Government. If an Order includes identification of a prime contract, drawings or specifications, or both, such references are intended to reflect the requirements of Buyer's prime contract and it shall be the responsibility of Seller to assure that it is familiar with and strictly complies with all prime contract requirements applicable to the goods, services, or both, covered by such Order. Upon request, the Seller may request from Buyer, copies of applicable plans, specifications, and general requirements of the prime contract.

**4. Performance and Delivery**

It is agreed that time is of the essence in performance of any Order incorporating these terms and conditions. Commencement and completion of work or delivery of the goods ordered shall be strictly in accordance with the schedule/date set forth on the face of the Order, or, if no schedule/date is there set forth, in accordance with the requirements of Buyer's prime contract. If requested by Buyer, Seller shall submit to Buyer, in the form acceptable to Buyer, a detailed schedule for performance of the Order which schedule will comply with all schedule requirements of Buyer's prime contract. If the Order requires shipboard work, Seller shall, at no additional cost to Buyer, coordinate its work with that being performed by Buyer, Buyer's customer, or other subcontractors of Buyer or Buyer's customer.

Seller shall furnish personnel, supervision, equipment, and materials sufficient to complete the Order within the defined schedule. If Seller falls behind schedule or if it otherwise appears that Seller will not complete the tasking or deliver goods within the schedule required, the Buyer may, in accordance with Article 33 (Termination for Default) hereof, terminate Seller's right to proceed with the task or with such part of

any task as is behind schedule, or may require Seller, at Seller's expense, to increase its personnel or shifts, to use overtime, to use expedited shipping means, or to take such other measures as may be necessary to meet or recover schedule. Seller agrees to notify Buyer immediately if, at any time, it appears that the delivery schedule set forth herein may not be met. Such notifications shall include the reasons for any possible delays, steps being taken to remedy any such problems and a proposed revised delivery date.

Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver in advance of schedule.

**5. Packing and Shipping**

The Articles shall be packed and shipped by Seller in accordance with Buyer's instructions and good commercial practice so as to ensure that no damage shall result from handling, weather, or transportation. If Articles are tendered to a common carrier for delivery, packing also shall conform to packing requirements applicable to such carrier. The cost of such packing and shipping shall not be allowed unless included in the price of the Articles. Evidence of shipment of goods must be forwarded to Buyer immediately after shipment. A certificate stating that all required tests have been performed and that all Articles conform to drawings and specifications shall be supplied separately for each partial or complete shipment of each Article. Unless otherwise stated, all deliveries and prices are F.O.B. Buyer's facility and all sales, excise, or other taxes applicable to the Articles are included in the Order price.

**6. Warranty**

Seller warrants that all work and materials furnished hereunder will be free from defects in materials and workmanship and will conform to applicable specifications, drawings, samples and descriptions, and if Seller's design or selection, will be free from design defects and fit for intended use. Except as otherwise expressly provided, the foregoing warranties shall be in effect for a period of 90 days that shall commence immediately following the completion of Buyer's contract or the redelivery of the vessel by Buyer to the Government provided, however, if the equipment, materials, or workmanship provided hereunder is incomplete at the time of completion of the contract or redelivery of the vessel, the above guarantee shall not commence until said equipment, materials, or workmanship is completed. If any time during said period, non-conformity in equipment, materials or workmanship furnished by Seller is discovered, such non-conforming equipment, material, or workmanship shall be made good, at Seller's expense, to the requirements of this contract and the plans and specifications. All warranties shall run to Buyer and Buyer's customers.

**7. Infringement Indemnity**

Seller shall indemnify and hold harmless Buyer, its successors, assigns, customers, and users, to the extent such customers and users are indemnified by the Buyer, for the full extent of any loss, expense, cost, damage, or liability from any claimed infringement of any United States patent, trademark, copyright, or any claimed unauthorized use of data or proprietary rights with respect to the Articles, except those manufactured to Buyer's detailed design or manufacture differ from Seller's normal practice. Seller shall defend same at its expense, provided that Buyer notified Seller of such claimed infringement.

**8. Compliance with Laws**

Seller shall comply with all Federal, State, and local laws, executive regulations, and orders.

The Seller shall be responsible for obtaining any necessary license and permits applicable to the performance of work.

Seller shall produce the Articles in compliance with all requirements of the Fair Labor Standards Act.

Seller shall comply with Executive Order 13496, 29 CFR 471 – NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS, 29 CFR Part 471, Appendix A to Subpart A.

**Federal Acquisition Regulation (FAR) 52.204-10 – Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2010)** requires Prime Contractors to collect data from Subcontractors (Supplies and Services) and report it monthly to <https://www/fsrs.gov/>.

Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires Prime Contractors to report information on subcontract awards. The law requires all reported information be made public; therefore, the Prime Contractor is responsible for notifying its subcontractors that the required information will be made public.

**Purchase Order Terms & Conditions**  
**Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

A) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Prime Contractor shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. The following will be requested:

(i) Note: If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Prime Contractor does not need to report awards to that subcontractor. Sign here if in the previous tax year your company had gross income from all sources under \$300,000:

\_\_\_\_\_

- 1) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
  - a. Subcontractor DUNS: \_\_\_\_\_
  - b. Parent Company DUNS (if applicable): \_\_\_\_\_
- 2) Subcontractor Name: \_\_\_\_\_
- 3) Amount of the Subcontract Award: \_\_\_\_\_
- 4) Date of the Subcontract Award: \_\_\_\_\_
- 5) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 6) Subcontract number (assigned by the Prime Contractor): \_\_\_\_\_
- 7) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Nine-digit ZIP Code: \_\_\_\_\_ Congressional District: \_\_\_\_\_

- 8) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Nine-digit ZIP Code: \_\_\_\_\_ Congressional District: \_\_\_\_\_

- 9) Prime contract number: \_\_\_\_\_ Order number: \_\_\_\_\_.
- 10) Awarding agency name and code: \_\_\_\_\_
- 11) Funding agency name and code: \_\_\_\_\_
- 12) Government contracting office code: \_\_\_\_\_
- 13) Treasury account symbol (TAS) as reported in FPDS: \_\_\_\_\_
- 14) North American Industry Classification System code (NAICS): \_\_\_\_\_

Note: Items 2-6 and 9-14 above will be completed by the Prime Contractor.

B) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <http://www.fsr.gov> , if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.



Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense, including lost profit, attorney's fees, and court or other costs, for any failure or alleged failure of Seller to comply with the requirements of this paragraph.

**9. Export Control Compliance**

- (a) If Seller is organized to do business in the United States, Seller shall comply with the Arms Export Control Act (22 U.S.C. 2778), the International Traffic In Arms Regulations (ITAR) (22 CFR Parts 120 to 130), the regulations issued by the Office of Foreign Assets Control (OFAC) (31 CFR Chapter V), and all other applicable laws, regulations and orders which control the imports and exports of defense articles, defense services, and technical data.
- (1) The Vessel and the Contract Products are deemed to be "defense articles" under the ITAR. This Contract may require Seller to furnish "defense services" and/or export "technical data" as defined in the ITAR.
  - (2) Seller represents and warrants that, if it manufactures or exports defense articles or furnishes defense services, it is registered with the Office of Defense Trade Controls (DTC), Bureau of Political-Military Affairs, Department of State.
  - (3) Technical data and defense services furnished by Buyer to Seller are authorized for use only by Seller and may not be exported or re-exported without a license or other approval from DTC.
  - (4) If Seller desires to authorize Buyer to export technical data directly to, or furnish defense services to, a sub-tier supplier that is a foreign person, Seller shall include Buyer as a third party signatory on any export license or other approval prior to Buyer's exporting technical data to, or furnishing a defense service to, any such foreign person sub-tier supplier.
  - (5) Seller shall provide to Buyer, upon request, all licenses or other approvals obtained by Seller in compliance with the above requirements, redacted if Seller desires to prevent the disclosure of any proprietary data.

- (b) If Seller is not organized to do business in the United States, Seller nevertheless shall perform this Contract in compliance with the laws, regulations and terms set forth in subparagraph (a) hereof, specifically including, but not limited to, those provision regarding the re-export of defense articles, defense services and technical data. Seller shall execute any documents required by Buyer in order for Buyer to lawfully export defense articles, defense services or technical data, or furnish defense services, to Seller in the performance of this Contract.

**10. Insurance Requirements for Subcontractor Bidding Eligibility**

To comply with the Federal Acquisition Regulations, subcontractors as well as contractors must have minimum insurance coverage. PACSHIP will not issue purchase orders for services to entities that do not have current certificates of insurance evidencing adequate coverage as listed below, on file at PACSHIP.

**(1) Comprehensive General Liability (CGL)**

Minimum limits: \$2,000,000 CGL

Must include contractors liability, products/completed operations and bodily injury of at least \$1,000,000 per occurrence

**(2) Automobile Liability**

Minimum combined bodily injury and property damage: \$1,000,000 per occurrence. (not required if not driving a vehicle at any of our job sites)

**(3) Workers Compensation and Longshoremen's and Harbor Workers Compensation Insurance**

Insurance with limits of liability conforming to the statutory requirements of the United States of America and any state where the work is being performed by Subcontractor's employees. (US Longshoremen's and Harbor Workers (USL&H) Coverage not required if employees will not go aboard vessels.) (USL&H and Workers Compensation not required if there are no employees other than owners.)

**(4) Excess Liability**

If required to meet the above minimum limits

In addition, each certificate referred to in subparagraphs (1), (2) and (3) above must show on its face that Pacific Ship Repair and Fabrication, Inc. is named as an additional insured. Additionally each policy of insurance shall carry a provision whereby the subcontractor waives its rights to subrogation against PACSHIP, its officers, agents and employees, the U.S. Government and its agents, the vessel and its owners. **Policy endorsements evidencing the "Additional Insured" and "Waiver of Subrogation" status must be included with the Certificates of Insurance.**

**Seller shall immediately notify buyer in the event that notice of cancellation is issued for any reason prior to the expiration date of any policy subject to this Clause".**

Please have copies of the required Certificates and Policy Endorsements emailed or faxed to the party requesting it. In addition, please arrange to have hard copies of Certificates and Policy Endorsements mailed directly to:

Pacific Ship Repair & Fabrication, Inc.  
Contracts Department  
1625 Rigel Street  
San Diego, CA 92113-3808

**11. Indemnity**

To the extent permitted under law, Seller shall indemnify, save harmless and defend Buyer, its officers, agents and employees from and against any and all suits, legal proceedings, claims, demands, damages, costs, and expenses of whatsoever kind or character (including, but not limited to, reasonable attorney's fees and expenses) arising out of any injury, (including death) or damage to any persons or property in any manner, caused by any defect in the goods or services or negligence of the Seller, or anyone acting on Seller's behalf, in connection with or incident to the Order or work to be performed thereunder.

**12. Payment**

Payments terms are NET 30 days following final completion of work, submission of a proper invoice by Seller, and signoff/acceptance indicated by a completed Pacship FORM "Certificate of Completion".

**13. Setoff and Withholding**

Buyer may setoff any amount due from Seller, whether or not under the Order, against any amount due Seller hereunder. Buyer may withhold from payment to Seller an amount sufficient to reimburse Buyer for any loss, damage, expense, cost, or liability relating to Seller's alleged or actual failure to comply with any requirements of the Order.

**14. Non-Assignment**

Buyer shall not be bound by any assignment until after receipt of written notice from Seller. Seller shall not assign or delegate the Order or any right, duty, or interest therein, including any payment due or to become due with respect thereto, without Buyer's prior written consent. Payment to an assignee shall be subject to setoff or withholding for all present or future claims which Buyer has against Seller, unless such claims are expressly waived in writing.

**15. Liens**

Seller shall promptly pay when due all charges incurred in connection with the order and shall indemnify PACSHIP against any lien or claim arising out of non-payment of such charges. PACSHIP may require, prior to making payment to Seller, that Seller provide releases or satisfactory evidence of its payment of all such charges.

**16. Consequential Damage**

Notwithstanding any other provision herein, Buyer shall, under no circumstances, be responsible for any consequential, indirect, or special damages.

**17. Non-waiver**

No waiver of any provision or failure to perform any provision of the Order shall be effective unless agreed to by an authorized agent of the Buyer in writing nor shall any such waiver constitute a waiver of any other provision or failure to perform.

**18. Customer Property**

Seller shall be strictly accountable for any property of Buyer or Buyer's customer that comes into the control of Seller during the performance of any Order including, but not limited to, any material removed from a customer's ship, and specifically including, but not limited to, any oils or fuels removed from tanks. Seller shall control, protect, preserve, and maintain records of all such property in conformance with the requirements of FAR Subpart 45.5.

**19. Buyer-Furnished Property**

Seller shall not use, reproduce, appropriate, or disclose to anyone other than Buyer any material, technical information, and other property or data furnished by Buyer, nor shall Seller use the same to produce or manufacture articles other than those required hereunder without prior written authorization from Buyer. Title to such Buyer-furnished property shall be and remain in Buyer at all times. Seller shall bear the risk of loss, damage, or destruction of the property furnished by Buyer and shall promptly replace or repair without expense to Buyer any property which is lost, damaged, or destroyed, unless such loss, damage, or destruction is solely, directly, and proximately caused by Buyer's negligence. All Buyer-furnished property, together with spoiled and surplus materials, shall be returned to Buyer at termination or completion of this Order unless Buyer shall direct otherwise in writing.

**20. Removed Material, Scrap, Salvage and Excess Material**

Seller shall retain all removed government material, including, scrap, salvage and excess for turnover to PACSHIP GFM Department. All such material turned-in must be properly identified by the Seller. Comply with the requirements of NAVSEA Standard Item 009-20, FAR 45.505-8 and FAR 45.614.

Removed material, scrap, salvage and excess material must be turned in no later than five work days after contract completion.

**21. Technical Manuals**

Technical Manuals furnished to Seller shall be returned to Buyer no later than five workdays after contract completion.

**22. Provisioning Technical Documentation (PTD)**

Seller shall comply with NAVSEA Standard Item 009-19 for providing PTD. Reports called for in 009-19 will be submitted by Seller to Buyer.

**23. Specification**

Unless otherwise directed in the Order, Seller shall manufacture the Articles in accordance with the current specifications, drawings, and designs for the Articles. Seller is responsible for validating that the Order's specifications, drawings, and designs are the current revisions. If Seller determines that any of the specifications, drawings, or designs are not the most current revision, Seller shall notify Buyer immediately.

**24. Workmanship and Materials**

Work performed and goods supplied pursuant to any Order shall be in strict accordance with the specifications set forth or referenced in such Order, including all applicable plans and specifications of Buyer's prime contract. Unless otherwise specifically provided in any Order, or in Buyer's prime contract, all operational practices of Seller and all workmanship and materials shall be in accordance with the latest rules and requirements of the American Bureau of Shipping, United States Coast Guard and the American Institute of Electrical and Electronic Engineers, and with the best commercial marine practice; where buyer's prime contract shall specify U.S. Navy specifications, Navy standards of material and workmanship shall be followed.

**25. Inspection and Test**

Seller shall maintain a system of quality control including all inspections and tests necessary to insure conformance with the plans and specifications. At all times during Seller's performance, all material and workmanship shall be subject to inspection and test by Buyer or by its prime contract customer; this right of inspection and test shall include rights of in-process inspection and test and of review of Seller's inspection and test documentation and records. All goods, work, materials and services furnished hereunder shall be subject to final inspection after completion or delivery notwithstanding prior payment. Any inspection by Buyer or Buyer's customer, whether in-process or final, and any failure to inspect by Buyer or Buyer's customer shall not be deemed to constitute acceptance and shall not relieve Seller of its obligations hereunder, including, but not limited to those set forth at Clause 24 Workmanship and Materials, above. In addition to its obligations under clause 6 Warranty, hereof, Seller shall, prior to acceptance, promptly correct or replace any defective work or materials to the satisfaction of Buyer and Buyer's prime contract customer. If Seller fails promptly to proceed with such correction or replacement, Buyer may, in addition any other rights provided hereunder or by applicable law, by contract or otherwise, proceed with such correction or replacement and charge to Seller the cost thereof.

**26. Hazardous Waste**

The Seller shall comply with the Resource Conservation and Recovery Act (RCRA) and all other applicable Federal, State and local laws, codes, ordinances and regulations for the management and disposal of hazardous waste. Seller is directed to the California Code of Regulations, Title 22, Division 4.5; Environmental Health Standards for Management of Hazardous Waste, for the definitions of "generator" and "hazardous waste".

The Seller agrees to be responsible for the proper management and disposal of all Seller generated hazardous waste and shall use an EPA identification generator number issued to the Seller for the disposal of the hazardous waste.

**27. Hazardous Material Identification**

Without regard to whether Buyer's prime contract is for the federal Government, Seller agrees to identify hazardous material as defined by FAR Clause 52.223-3 subparagraphs (a), (b) and (c), to submit a Material Safety Data Sheet as provided by subparagraph (d) of that clause, and otherwise agrees to comply with the provisions of that clause as though Seller were in the position of "offeror" and "contractor" and Buyer were in the position of "contracting officer" as those terms are used in that clause.

**28. Subcontracts**

Seller shall not, without prior written consent of Buyer, subcontract for all or any portion of the Order. Prior to granting such consent, PACSHIP will require all prospective subcontractors to meet PACSHIP approval requirements, including but not limited to, agreement to Purchase Order Terms and Conditions, undergo a Quality audit, and provide proof of insurance as required by clause 10 herein.

**29. Other Contracts**

Other subcontracts may be awarded by Buyer for portions of the work required under Buyer's prime contract. Seller shall cooperate with all other subcontractors, accept direction from Buyer with respect to performance, schedule or reschedule its work as necessary to coordinate with the work of Buyer and other subcontractors, attend meetings as requested by Buyer, and be responsible for its personnel working harmoniously with Buyer personnel and other subcontractors and with personnel of Buyer's customers, all at no additional cost to Buyer.

**30. Independent Contractor**

It is understood and agreed that Seller shall be deemed an independent contractor in all its operations and activities under any Order, and that the employees furnished by Seller to perform work under any such Order shall be deemed to be Seller's employees exclusively without any relation whatever to Buyer as employees or independent contractors; said employees shall be paid by Seller for all services and Seller shall be responsible for obligations and reports covering social security, unemployment insurance, worker's compensation, and other reports and obligations required of employers by state and federal law.

**31. Incorporation of Clauses by Reference**

This Order is subject to the clauses contained in the following articles of the FAR and corresponding provisions of the DFARS, as well as, the following specifically identified provisions of the DFARS in effect as of the date of each individual Order, all of which are hereby incorporated by reference. Except where it clearly appears from a reading of the FAR and DFARS that the Government has a particular and direct interest in this Order, Seller agrees to be bound thereby in the same manner as if Seller were the named 'Contractor' therein, and the Buyer were the named 'Government' or 'Contracting Officer'. The word 'Subcontractor' means 'Subcontractor' or 'Seller'.

The following provisions are incorporated into each Order by reference, with the same force as if they were given in full text. The full text of the FAR and DFARS Clauses can be accessed at the following web addresses: <http://www.arnet.gov> or <http://www.farsite.hill.af.mil>.

<u>FAR Section</u>	<u>Title/Description</u>
52.202-1	Definitions (Jul 2004)
52.203-3	Gratuities (Apr 1984). "Government" means Buyer.
52.203-5	Covenant Against Contingent Fees (Apr 1984). "Government" means buyer in paragraph (a).
52.203-6	Restrictions on Subcontractor Sales to the Government (Sep 2006).
52.203-7	Anti-Kickback Procedures (Oct 2010).
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997).
52.203-10	Price or Fee Adjustment for Illegal Activity (Jan 1997).
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007) [applicable if this Order exceeds \$150,000; for purposes of this clause, the term "Offeror"



**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

means Seller and the term “offer means Seller’s bid, proposal, quote, or acceptance of this Order].

- 52.203-12            Limitation on Payments to Influence Certain Federal Transactions (Oct 2011) [applicable if this Order exceeds \$150,000]
- 52.203-13            Contractor Code of Business Ethics and Conduct (Apr 2010)
- 52.203-14            Display of Hotline Poster(s) (Dec 2007)
- 52.203-15            Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009. (Jan 2010)
- 52.204-2             Security Requirements (Aug 1996)
- 52.204-9             Personal Identity Verification of Contractor Personnel (Jan 2011)
- 52.204-10            Reporting Executive Compensation and First-Tier Subcontracts (Jul 2010)
- 52.209-6             Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006).
- 52.211-5             Material Requirements (Aug 2000)
- 52.211-15            Defense Priority and Allocation Requirements (Apr 2008)
- 52.214-26            Audits and Records – Sealed Bidding (Oct 2010)

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- 52.214-27            Price Reduction for Defective Cost or Pricing Data – Modifications—Sealed Bidding (Aug 2011) (Applicability; Clause 31)
- 52.214-28            Subcontractor Cost and Pricing Data – Modifications-Sealed Bidding (Oct 2010)
- 52.215-2             Audit and Records - Negotiation (Mar 2009)

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

- 52.215-8 Order of Precedence – Uniform Contract Format (Oct 1997)
- 52-215-10 Price Reduction for Defective Cost or Pricing Data (Aug 2011)
- 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (Aug 2011) [applicable if Order issued meets requirements of FAR 15.403-4].
- 52.215-12 Subcontractor Cost and Pricing Data (Oct 2010) [applicable if Order issued meets the requirements of FAR 15.403-4].
- 52.215-13 Subcontractor Cost and Pricing Data – Modifications (Oct 2010)
- 52.215-14 Integrity of Unit Prices (Oct 2010)
- 52.215-15 Pension Adjustments and Asset Reversions (Oct 2010)
- 52.215-16 Facilities Capital Cost of Money (Jun 2003) [applicability; FAR 31.205-10(b)].
- 52.215-17 Waiver of Facilities Capital Cost of Money (Oct 1997).
- 52.215-18 Reversion or Adjustment of Plans for Post Retirement Benefits (PRB) Other than Pensions (Jul 2005) [applicability; FAR 15.408(j)].
- 52.215-19 Notification of Ownership Changes (Oct 1997) [applicability; FAR 15.408 (k)].
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- 52.215-20 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data (Oct 2010) [applicability; FAR 15.408(l)].
- 52.215-21 Requirement for Cost and Pricing Data or Information Other than Cost and Pricing Data – Modifications (Oct 2010) [applicability; FAR 15.408(m)].
- 52.216-7 Allowable Cost and Payment (Jun 2011) [applicable if Order is a cost reimbursement type subcontract].

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

- 52.219-8 Utilization of Small Business Concerns (Jan 2011).
- 52.219-9 Small Business Subcontracting Plan (Jan 2011)
- 52.222-1 Notice to the Government of Labor Disputes (Feb 1997).
- 52.222-3 Convict Labor (Jun 2003).
- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (Jul 2005)
- 52.222-19 Child Labor—Cooperation with Authorities and Remedies (Jul 2010)
- 52.222-20 Walsh-Healy Public Contracts Act (Oct 2010)
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999) [by acceptance of this Order, Seller agrees to provide the required certifications].
- 52.222-26 Equal Opportunity (Mar 2007).
- 52.222-35 Equal Opportunity for Veterans, (Sep 2010).
- 52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010)
- 52.222-37 Employment Reports on Veterans (Sep 2010).
- 52.222-38 Compliance with Veteran’s Employment Reporting Requirements (Sep 2010)
- 52.222.40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010). Applicable if over \$10,000
- 52.222-50 Combating Trafficking in Persons (Feb 2009)
- 52.222-54 Employment Eligibility Verification (Jan 2009)

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

- 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Dec 2007)
- 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997).
- 52.223-5 Pollution Prevention and Right-To-Know Information (May 2011).
- 52.223-6 Drug-Free Workplace (May 2001).
- 52.223-7 Notice of Radioactive Materials (Jan 1997).
- 52.223-11 Ozone-Depleting Substances (May 2001).
- 52.223-12 Refrigeration Equipment and Air Conditioners (May 1995).
- 52.225-5 Trade Agreements (Aug 2009)
- 52.225-8 Duty-Free Entry (Oct 2010).
- 52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008).
- 52.227-1 Authorization and Consent (Dec 2007).
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
- 52.227-3 Patent Indemnity (Apr 1984).

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- 52.227-9 Refund of Royalties (Apr 1984).
- 52.227-10 Filing of Patent Applications – Classified Subject Matter (Dec 2007)
- 52.227-11 Patent Rights – Ownership by the Contractor (Dec 2007)
- 52.227-13 Patent Rights – Ownership by the Government (Dec 2007)

**Purchase Order Terms & Conditions**  
**Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

52.228-5	Insurance – Work on a Government Installation (Jan 1997)
52.229-3	Federal, State, and Local Taxes (Apr 2003).
52.229-4	Federal, State, and Local Taxes (State and Local Adjustments) (Apr 2003).
52.230-2	Cost Accounting Standards (Oct 2010)
52.230-3	Disclosure and Consistency of Cost Accounting Practices (Oct 2008).
52.230-6	Administration of Cost Accounting Standards (Jun 2010).
52.232-20	Limitation of Cost (Apr 1984)
52.232.22	Limitation of Funds (Apr 1984)
52.234-1	Industrial Resources Developed Under Defense Production Act Title III (Dec 1994).
52.237-2	Protection of Government Buildings, Equipment, and Vegetation (Apr 1984).
52.242-1	Notice of Intent to Disallow Costs (Apr 1984).
52.242-3	Penalties for Unallowable Costs (May 2001).
52.243-6	Change Order Accounting (Apr 1984).
52.244-2	Subcontracts (Oct 2010).
52.244-5	Competition in Subcontracting (Dec 1996).
52.244-6	Subcontracts for Commercial Items (Dec 2010).
52.247-63	Preference for U.S. Flag Air Carriers (Jun 2003).

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

52.247-67            Submission of Transportation Documents for Audit (Feb 2006).  
52.248-1            Value Engineering (Oct 2010)  
52.253-1            Computer Generated Forms (Jan 1991)

**DFARS Section**

**Title/Description**

252.203-7001       Prohibition on Persons Convicted of Fraud or Other Defense –  
Contract Related Felonies (Dec 2008).  
252.204-7000       Disclosure of Information (Dec 1991).  
252.208-7000       Intent to Furnish Precious Metals as Government-Furnished  
Material (Dec 1991).  
252.209-7001       Disclosure of Ownership or Control by the Government of a  
Terrorist Country (Jan 2009).  
252.209-7002       Disclosure of Ownership or Control by a Foreign Government (Jun  
2010).  
252.209-7004       Subcontracting with Firms that are Owned or Controlled by the  
Government of a Terrorist Country (Dec 2006).  
252.211-7000       Acquisition Streamlining (Oct 2010).  
252.211-7003       Item Identification and Valuation (Jun 2011)  
252.215-7000       Pricing Adjustments (Dec 1991).  
252.217-7003       Changes (Dec 1991)  
252.217-7005       Inspection and Manner of Doing Work (Jul 2009)

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

- 252.223-7001 Hazard Warning Labels (Dec 1991).
- 252.223-7002 Safety Precautions for Ammunition and Explosives (May 1994).
- 252.223-7003 Change in Place of Performance-Ammunition and Explosives (Dec1991).
- 252.223-7004 Drug-Free Work Force (Sep 1988).
- 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Apr 1993).
- 252.225-7001 Buy American Act and the Balance of Payments Program (Jan 2009).
- 252.225-7002 Qualifying Country Sources as Subcontractors (Apr 2003).
- 252.225-7003 Report of Intended Performance Outside the United States and Canada – Submission with Offer (Oct 2010)
- 252.225-7007 Prohibition on Acquisition of US Munitions List Items from Communist Chinese Military Companies (Sep 2006)
- 252.225-7012 Preference for Certain Domestic Commodities (Jun 2010).
- 252-225-7013 Duty-Free Entry (Dec 2009)
- 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (Jun 2005).
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- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (Jun 2011).
- 252.225-7019 Restriction on Acquisition of Foreign Anchor and Mooring Chain (Dec 2009).
- 252.225-7025 Restriction on Acquisition of Forgings (Dec 2009).
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (Apr 2003)

**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (Dec 2006).
252.225-7031	Secondary Arab Boycott of Israel (Jun 2005).
252.225-7033	Waiver of United Kingdom Levies (Apr 2003)
252.225-7036	Buy American Act–Free Trade Agreement – Balance of Payments Program (Oct 2011).
252.225-7037	Evaluation of Offers for Air Circuit Breakers (Jun 2005).
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (Mar 2006)
252.227-7013	Rights in Technical Data – Noncommercial items (Sep 2011).
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Mar 2011).
252.227-7016	Rights in Bid Proposal Information (Jan 2011)
252.227-7019	Validation of Asserted Restrictions – Computer Software (Sep 2011).
252.227-7027	Deferred Ordering of Technical Data or Computer Software (Apr. 1988)
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government (Jun 1995)
252.227-7030	Technical Data – Withholding of Payment (Mar 2000).
252.227-7037	Validation of Restrictive Markings on Technical Data (Sep 2011).
252.231-7000	Supplemental Cost Principles (Dec 1991)



**Purchase Order Terms & Conditions  
Pacific Ship Repair & Fabrication, Inc., October 24, 2011**

252.243-7001	Pricing of Contract Modifications (Dec 1991)
252.243-7002	Requests for Equitable Adjustment (March 1998)
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (Sep 2011)
252-246-7000	Material Inspection and Receiving Report (Mar 2008)
252.246-7001	Warranty of Data (Dec 1991)
252.246-7003	Notification of Potential Safety Issues (Jan 2007)
252.247-7023	Transportation of Supplies by Sea (May 2002)
252.247-7024	Notification of Transportation of Supplies by Sea (Mar 2000)
252.249-7002	Notification of Anticipated Contract Termination or Reduction (Oct 2010)

**32. Changes**

Buyer or its prime contract customer may at any time, by written order, make changes within the general scope of any Order. Upon receipt of such a written change order, Seller shall proceed without delay with performance of the Order as changed. If any such change causes an increase or decrease in Seller's cost of, or in the time required for the performance of the Order, an equitable adjustment shall be made in the price or the time for completion, or both, and the Order shall be modified in writing accordingly; Seller's proposal for equitable adjustment shall be submitted to Buyer, in writing, within (3) days of Seller's receipt of a written change order.

If any change shall have resulted or derived in any way from an act or omission or formal or constructive order by Buyer's prime contract customer, Seller's right to equitable adjustment shall be contingent on, and the amount thereof shall be determined in accordance with the following:

- (a) Seller shall have provided to Buyer written notice of the facts giving rise to such change and shall have done so in time and in form sufficient to

enable Buyer to provide to Buyer's customer notice sufficient to protect Buyer's right to equitable adjustment under Buyer's prime contract.

- (b) Buyer shall be liable to Seller only to the extent that Buyer's prime contract customer accepts liability or is adjudicated to be liable therefore;
- (c) The amount of Seller's equitable adjustment, if any, shall not exceed that allowed or awarded to Buyer from its prime contract customer, less any profit or costs, or both, to which Buyer is entitled.

**33. Termination for Default**

PACSHIP may, at any time by written notice of default to the Seller, terminate the whole or any part of the work and/or order, without liability to PACSHIP, for any of the following events.

- (a) The Seller fails to make adequate work progress to meet the required production schedule and schedule milestones, to endanger performance of the job order in accordance with its terms;
- (b) The Seller fails to meet the productions schedule;
- (c) The Seller fails to complete the work;
- (d) The Seller fails to furnish the material required by the order;
- (e) The Seller breaches any terms or conditions of this agreement including but not limited to warranties and guarantees;
- (f) The Seller's insolvency: filing a voluntary or involuntary petition in bankruptcy, provide it is not vacated within 30 days from date of filing, appointment of a receiver or trustee for Seller's business, provided such appointment is not vacated within 30 days from date of such appointment, execution by the Seller of an assignment for the benefit of creditors; and
- (g) If any Federal, State or Local authorities having jurisdiction shall direct PACSHIP to undertake or refrain from undertaking work, or certain types

of work, and as a result thereof the merchandise or services ordered herewith shall become unnecessary.

It is expressly understood these remedies available to PACSHIP may be cumulative and additional to any others provided by this agreement, the Master Ship Repair Agreement, the purchase order, or further remedies provided in law or equity. At the time of any such termination, as provided for above, the Seller shall discontinue all work, place no additional orders, and cancel existing orders, on the best possible terms. Pending instructions, the Seller shall preserve and protect existing material, work in process, and completed work. The Seller's termination payment, if any, shall be based on that proportion of work satisfactorily completed at the time of termination. PACSHIP may offset against any sums due or to become due the Seller all costs incurred pursuing any of the remedies provided herein, including but not limited to, reasonable overhead, profit, and attorney's fees. The seller hereby agrees to indemnify PACSHIP for all damages and costs incurred by PACSHIP related to the subcontractor's failure to make adequate progress to meet the scheduled completion date, including but not limited to liquidated damages assessed to PACSHIP by the government and cost of completing the work thereof.

**34. Disputes**

(a) This Order and the performance of the parties hereunder shall be controlled and governed by the Law of Federal Government contracts and, where the Federal Government contracts law is not applicable, the law of the State of California. The parties shall attempt, in good faith, to settle all disputes arising under this order. Any dispute which the parties cannot reach an amicable settlement will be resolved as described in paragraphs (b), (c) and (d) below. Pending final resolution of any dispute under this Order, Seller shall proceed diligently with the performance of this Order.

(b) In the event (1) Seller's claim, or any portion thereof, against Buyer is the proper subject for a claim by Buyer against a higher-tiered contract contractor, including the Government, under the terms of the Buyer's Contract with a higher-tiered contractor ("Buyer's Contract"), or (2) Buyer's claim against Seller, or any portion thereof, is based upon a corresponding claim against Buyer by a higher-tiered contractor, including the Government under Buyer's contract, then the dispute shall be litigated only pursuant to the Disputes clause of Buyer's Contract. Seller will cooperate fully with Buyer in drafting and documenting any claims to be presented to the higher-tiered contractor or in responding to any claim by a higher-tiered contractor. Seller agrees to certify that its claim or defense is made in good faith, all supporting data for its claim or defense are

accurate, current, and complete, and the amount of the claim accurately reflects the amount for which the Seller believes it is entitled.

Seller and Buyer agree that the claim of a higher-tiered contractor or the decision of the higher-tiered contractor on a claim presented by Buyer is final and binding on the parties unless the higher-tiered contractor's action is appealed pursuant to Buyer's Contract. Buyer shall notify Seller of the higher-tiered contractor's action within 10 days after Buyer's receipt thereof. Within 10 days of such notice, Seller shall advise Buyer in writing whether Seller desires to appeal the action. If Seller desires the action appealed, Seller's notice to Buyer shall set forth in detail its reasons and shall specifically request Buyer to appeal such decision. Buyer shall have absolute discretion whether to appeal such decision.

If Buyer agrees to appeal a decision, Seller agrees to indemnify and hold harmless Buyer for the cost of said appeal and applicable attorney's fees incurred in prosecuting any such appeal initiated by Buyer at Seller's request. Seller may participate in any such appeal at its own expense. Buyer may require the Seller to prosecute the appeal in Buyer's name and at the prosecution of appeals, (if such authorization is provided, Seller shall have full responsibility for such proceedings and shall bear all expenses, including attorney's fees in connection therewith, provided however, that such authorization shall not constitute Seller the agent or attorney for Buyer.) The outcome of the appeal shall be final and binding on the parties. Buyer agrees that it will take no action to settle or prejudice Seller's claim without Seller's consent. Seller's right to interest is limited to its apportioned share of interest recovered pursuant to the appeal.

(c) For all other disputes, the parties agree to enter into binding Arbitration. The American Arbitration Association Commercial Arbitration Rules (most current) are to govern the Arbitration. The Arbitration shall take place in the City of San Diego, State of California. The Arbitrator shall be bound by the applicable Subcontract provisions and California law in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

**35. Certification of Claims and Demands**

In the case of any Order entered into under a prime contract with the United States, the following will further apply to any claim, demand or request for equitable adjustment asserted by Seller in addition to any other requirements set forth herein:

- (a) Seller shall certify any such claim, demand or request in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. §601, et. seq.;
- (b) Seller shall indemnify and hold Buyer harmless against any claim, demand, or legal action against Buyer under the provisions of 41 U.S.C. §604 asserted in connection with or as a result of Buyer's submittal to the United States of any such claim, demand, or request of Seller.

**36. Cost or Pricing Data Indemnity**

If Seller submitted cost or pricing data (as defined in FAR subpart 15.4 Contract Pricing) as part of the process leading up to the award of this Order or if Seller submits such data in connection with the pricing of any change order or other modification of this Order, Seller acknowledges that it is aware of Buyer's potential liability to the Government in the event that any of Seller's data were not current, complete, or accurate. Seller warrants that all cost or pricing data submitted by it (including data obtained from Seller's subcontractors, if any) in connection with Order shall be complete, accurate, and current as of the time of agreement between Buyer and Seller to the price of this Order. Seller shall indemnify and save harmless Buyer from any and all loss or expenses caused by any breach of the foregoing warranty, including but not limited to any and all costs and fees incurred by Buyer in defending against claims alleging deficiencies in Seller's cost or pricing data, regardless whether such claims may ultimately be held lacking in merit.

**37. Release of Information**

Seller shall not advertise, publish, or otherwise release any information relating to the Order, including the fact that Buyer has issued the Order, without Buyer's prior written permission.

**38. Anti-Kickback Act, Business Conduct and Ethics, Debarment and Suspension**

- (a) Anti-Kickback Covenant. Seller is hereby on notice that this Order is subject to the terms of the Anti-Kickback Act of 1986 (41 U.S.C. §51-58) and implementing regulations and prime contract clauses. Seller agrees that Seller shall be strictly

prohibited from providing or attempting to provide or offering to provide any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to Buyer, to any Buyer employee, or to any other subcontractor of Buyer or any employee of any such subcontractor for the purpose of improperly obtaining this or any other contract or Order from Buyer or for rewarding favorable treatment in connection with this or any other contract or Order between Buyer and Seller. Seller also agrees that it shall promptly report to Buyer's Ethics Hotline (619) 232-3200 Ext.119 any solicitation or request for a kickback as defined in the previous sentence. Seller's breach of the forgoing prohibition or of the foregoing obligation to report shall be considered a material breach of this contract and of any and all contracts between Buyer and Seller.

- (b) Gifts and Gratuities to Buyer's Personnel. The Seller is hereby on notice that it is Buyer's policy that Buyer's personnel owe complete loyalty to Buyer and are forbidden to accept money or things of value from any supplier of goods or service to Buyer, regardless whether such acceptance would constitute an act prohibited by the Anti-Kickback Covenant of this Order. Seller for itself and its principal owners, stockholders, and officers warrants and covenants that no employee of Buyer has any financial interest in Seller (except such as has been disclosed in writing to Buyer's Director of Contract Management), and that Seller has not and will not directly or indirectly give anything of value to any employee of Buyer. The only exception to the foregoing prohibition against gifts or gratuities to Buyer's personnel shall be promotional or commemorative items having a value of less than \$25.00, and food and refreshments during business meetings. Breach of the foregoing warranty and covenant shall entitle Buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer learns of any such breach, regardless when such breach may have occurred.

- (c) Procurement Integrity Covenant. Seller is hereby on notice that this Order is subject to the terms of the Office of Federal Procurement Policy Act (41 U.S.C. §423) and implementing regulations. Seller agrees that Seller shall, during the conduct of any federal agency procurement, be strictly prohibited from engaging in any of the following activities: (i) making, directly or indirectly, any offer or promise of future employment or business opportunity to, or engaging, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency; (ii) offering, giving, or promising

to offer or give, directly or indirectly, any money, gratuity, or other things of value to any procurement official of such agency; (iii) soliciting or obtaining, directly or indirectly, from any officer or employee of such agency, any proprietary or source-selection information regarding such procurement; (iv) knowingly disclosing any proprietary or source-selection information regarding such procurement, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information; or (v) permitting any individual who was formerly a Government procurement official with respect to the Government contract appearing on the face of this Order to knowingly participate in any manner in any negotiations leading to the award, modification, or extension of a contract for such procurement, or to knowingly participate personally and substantially on behalf of the Seller in performance of such contract [this last restriction, number (v), only applies if this Order qualifies under 41 U.S.C. §423(d)]. Seller also agrees that it shall promptly report to Buyer's Ethics Hotline (619) 232-3200 Ext.119 any violations or possible violations of the above provisions.

Seller's violation of any of the prohibitions set forth in 41 U.S.C. §423 or failure to comply with the reporting requirements shall be considered a material breach of this contract and of any and all contracts between Buyer and Seller. Seller agrees to indemnify and save harmless Buyer and its successors, assigns, or customers from any expense, loss, damage, or liability on account of any violations of the foregoing prohibitions. Seller agrees at its own expense to defend any actions, suits, or claims in which such violations are alleged, provided that Seller is notified as to such actions, suits, or claims.

(d) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. Seller is hereby on notice that if a Government contract number appears on the face of this Order and if this Order exceeds \$1,000,000, this Order is subject to the terms of 31 U.S.C. §1352 and implementing regulations and prime contract clauses. Seller agrees that Seller shall be strictly prohibited from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of, or the modification of, any federal contract. Seller also agrees that it will furnish to Buyer's Director of Contract Management a disclosure form, OMB Standard Form LLL, Disclosure or Lobbying Activities, if any funds other than federal appropriated funds (including profit or

fee received under a federal transaction) have been paid, or will be paid, to any person as defined in the previous sentence to influence such person in connection with a federal contract. The Seller further agrees that it shall file a disclosure form with Buyer's Director of Contract Management at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by Seller under this clause. Seller's breach of the foregoing prohibition or of the foregoing obligation to file disclosure forms shall be considered a material breach of this contract and of any kind and all contracts between Buyer and Seller.

(e) Debarment and Suspension Covenant. Seller is hereby on notice that if this Order exceeds \$30,000, this Order is subject to the terms of FAR Subpart 9.4. Seller for itself and its principals warrants and covenants that neither Seller nor any of its principals as the time of entering into this Order is debarred, suspended, or proposed for debarment by the Federal Government (except such as has been disclosed in writing to Buyer's general Counsel). "Principals" as used in this clause means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities. Breach of the foregoing warranty and covenant shall entitle buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer learns of any such breach, regardless when such breach may have occurred.

**39. Option**

Buyer may increase the quantity of each item listed herein by an additional number of units not to exceed 100% of the original Order. The cost of the additional quantity shall be no higher unit price than the original Order. This option may be exercised by Buyer at any time within 180 days after the date of the Order. Delivery of the items added by exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under the Order, unless the parties agree otherwise in writing.

**40. Severability**

If any provision of the Purchase Order, or part thereof, shall be invalid or unenforceable, such provision or part shall be deemed severed, and the remainder hereof shall be given full force and effect.



**41. Entire Agreement**

These terms and conditions, together with any other special provisions or specifications appearing or referenced on the face of any Order constitutes the entire agreement between Buyer and Seller.