



# LOURDES ADDITIONAL TERMS AND CONDITIONS OF PURCHASE

LOURDES ADDITIONAL TERMS AND CONDITIONS OF PURCHASE ON GOVERNMENT CONTRACTS 01/22/15

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## 1. ADDITIONAL CONDITIONS APPLICABLE TO ORDERS PLACED ON GOVERNMENT CONTRACTS

Except as otherwise herein provided, Buyer's Terms and Conditions of Purchase (set forth on the Order) and these Additional Terms apply to Orders issued in fulfillment of government prime or sub-contracts. Conflicts of the Terms and Conditions of Purchase with statutes, regulations, rules or required clauses provided for in the government prime contract or by published regulations of the government agency or department issuing the prime contract, shall be resolved in favor of the government requirement. If this Order is issued pursuant to a government prime contract, the prime contract is identified by number on the face of this Order.

**A. HIGHER-LEVEL CONTRACT QUALITY REQUIREMENTS (GOVERNMENT SPECIFICATION).** If a higher-level government inspection or quality requirement is designated on the face of this Order as applicable to this Order, Seller shall comply with that requirement to the satisfaction of Buyer and the government; and both Seller, quality assurance program and Seller's implementation thereof shall be subject to inspection and verification by Buyer or the government in accordance with the terms of the FAR inspection clause, the applicable quality requirements and FAR subparts 46.2, 46.3 and 46.4.

**B. SPECIAL TEST EQUIPMENT.** If Seller will acquire special test equipment (as defined in subparagraph (a) of FAR Clause 52.245-18 "Special Test Equipment") for Buyer, Seller agrees to comply with subparagraphs (b), (c), (d) and (e) thereof, except that Seller shall give Buyer sixty (60) days notice of such intent.

### C. TERMINATION-DEFAULT AND CONVENIENCE

- I. Buyer may terminate work under this Purchase Order in whole or in part at any time by written or electronic notice to Seller.
- II. **DEFAULT.** If this Order is terminated for breach or default by Seller, Buyer shall have all the rights provided "the Government" by FAR clause 52.249-8 and Seller shall have the rights and obligations provided the "Contractor" by that same clause.
- III. **CONVENIENCE.** Upon termination of this Order by Buyer for any reason other than a default or breach by Seller which is not excusable under the standards set forth in FAR 52.249-8, the respective rights and duties of Buyer and Seller shall be as provided in FAR clause 52.249-2, Termination for Convenience of the Government (Fixed-Price) (or alternative clause made specifically applicable to the Buyer, contract by this Order), and settlement shall be made in accordance with the terms of that clause and of Parts 49 and 45 (Government Property) of the FAR and the FAR supplement of the department or agency of the United States applicable to the Buyer's Contract in effect as of the date of such termination. All terms of such government contract termination and property disposition articles and regulations shall be deemed to be incorporated herein and model a part hereof.
- IV. If the clause at FAR 52.249-2 (or a specified alternative) is applicable: (1) "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer except in paragraph (m) where it means "Government and Buyer"; (2) in paragraph (c), the change "forty-five days" to "ninety days"; (3) in paragraph (d), "one year" is changed to "six months"; and (4) if the Government is unable or unwilling to conduct any audit of Seller's books and records in a timely manner, Buyer may elect to have an audit conducted by an independent certified public accounting firm which is mutually acceptable to Buyer and Seller.

### D. APPROVAL OF SUBVENDOR.

### E. SUBCONTRACTING.

- I. Seller agrees that it shall not, without Buyer's written, prior approval, subcontract this Order or any substantial portion thereof; PROVIDED, however, that this limitation shall not apply to the purchase by Seller of standard commercial supplies or raw materials.
- II. Seller shall select subcontractors, including suppliers, on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.

### F. CLAIMS-CERTIFICATION.

Any claim by Seller for equitable adjustment of the price or time of this Order, and any termination claim, shall be submitted to Buyer in writing, shall state the amount(s) claimed, and shall be supported by cost or pricing data which reasonably justifies the costs claimed. The term "claim" is as defined in FAR Part 33.2. A claim meeting the monetary threshold set forth at FAR 33.207 shall be certified by Seller, in the form set forth in said section 33.207, when submitted to Buyer, except that Seller's certification may provide, in part, that the amount requested accurately reflects the contract adjustment for which Seller believes Buyer or the government is liable.

### G. COST OR PRICING DATA

By law and regulation, Federal prime and sub-contractors are required to submit and certify cost or pricing data in connection with the pricing of certain contracts or modifications to contracts. In this regard, Seller agrees that, if Seller is required by law or regulation to submit and certify cost or pricing data, and is not exempt from said requirement under the standards in FAR 52.215-12, Seller shall comply with the data submission and certification requirements of FAR subpart 52.215 and further agrees that the appropriate clauses listed at FAR 52.215-12, entitled "Subcontractor Cost or Pricing Data" and "Price Reduction for Defective Cost or Pricing Data," are incorporated by reference in this Order as if fully set forth herein.

### H. DISPUTES.

- I. All claims, disputes and other matters in question arising out of or relating to this Order shall be submitted by Seller to Buyer pursuant to provision 'F' hereof. Any such matter which is not settled by written agreement of Buyer and Seller, shall be a dispute and Buyer or Seller may thereupon pursue any remedy which they may have in any court of competent jurisdiction, unless the dispute is subject to resolution pursuant to subparagraph III hereof.
- II. Pending the resolution of any dispute, the Seller shall diligently pursue the performance of the Purchase Order under the terms and in the manner set forth in the Order or as otherwise directed by Buyer.
- III. (a) At Buyer's sole discretion and at Buyer's written direction, and instead of resolution in court, Buyer may require that any dispute be (i) submitted to arbitration, the result of which will be final and binding on both parties, or (ii) resolved by submission of a claim by Seller to the government Contracting Officer in the name of Buyer, for resolution in accordance with the Disputes clause of the Prime Contract.  
(b) Buyer agrees to give Seller timely notice of any Contracting Officer final decision on a Seller claim or on a dispute arising out of or relating to Seller's performance under this Order. If Buyer, at its sole discretion, elects to prosecute an appeal of the decision, Seller shall be permitted to participate in the appeal for the purpose of protecting its interest and the Seller shall, at its expense, cooperate fully in assisting Buyer in prosecuting the appeal. Buyer agrees not to enter into a settlement with the government that would prejudice the Seller, rights without the Seller's consent.  
(c) If the Buyer, at its sole discretion, elects not to prosecute an appeal of the Contracting Officer's final decision, the Seller may request that the Buyer appeal such a decision on its behalf and the Buyer shall do so. Seller shall assume the burden of prosecuting such an appeal, but shall keep the Buyer fully informed of the status of and shall, upon the request of Buyer, provide Buyer with copies of papers filed in such an appeal. Such an appeal may not be settled without the advance approval of Buyer, which approval shall not be unreasonably withheld. All costs and expenses (including attorney's fees) incurred in prosecuting any appeal brought at the request of the Seller shall be borne by the Seller.
- IV. For all claims and disputes that are submitted to the government Contracting Officer in accordance with subparagraph III hereof, Seller agrees that the final resolution of such claim (a) by the Contracting Officer, unless it is appealed, or (b) by final judgment on an appeal shall be binding on the Seller to the extent that Buyer is bound and no additional amount shall be sought from Buyer relating to the subject matter of such claims and disputes.

### I. SPECIAL OBLIGATIONS OF SELLER -INDEMNITY.

In addition to any other remedies which Buyer may have, to the fullest extent permitted by law, Seller shall indemnify and hold Buyer, its successors, assigns, customers and the users of its products harmless from and against any and all claims, damages, losses, demands, suits, actions, judgments, liabilities, defaults, or costs and expenses, including court costs and attorney, fees (hereafter, "claim(s)"), as a result of the following:

- (a) If Buyer is assessed or required to pay any type of damages to the Government because Seller (1) failed to perform in accordance with the terms of this Order, or (2) made any false or inaccurate certification or representation to the Government or Buyer, or (3) failed to provide any data it was required to provide;
- (b) to the event that the Government asserts, pursuant to the clause in Buyer's Prime Contract with the Government entitled PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA, that any cost, price, or fee included in Buyer's Prime Contract should or will be reduced as a result of, or attributable to, cost or pricing data, or certifications thereof, which Seller or its subcontractors (at any tier) were required to submit by law and/or this Order, or did submit to Buyer, or failed to submit to Buyer.
- (c) In the event that any cost, price or fee in Buyer's Prime Contract is reduced because of any failure on the part of the Seller to comply with the provisions of the COST ACCOUNTING STANDARDS clause, if applicable to the Contract.
- (d) (i) In the event of any claim attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, to the extent caused in whole or in part by any act or omission of Seller or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph (d).  
(ii) In any and all claims against Buyer or the Government or any of their agents or employees by any employee of the Seller, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this paragraph (d) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller under worker's or workmen's compensation acts, disability benefit acts, or other employee benefit acts.
- (e) **PATENT PROTECTION.** In the event of any claims for actual or alleged infringement of all letters patent, trademarks or corresponding rights.
- (f) Seller's obligation of indemnity herein shall not be excused or diminished on account of any failure of Buyer to verify information which Seller has furnished or certified pursuant to requirements of this Order.

## 2. APPLICABLE GOVERNMENT CLAUSES AND REGULATIONS

The following clauses and other clauses in these Additional Terms are set forth in the applicable paragraphs of the Federal Acquisition Regulation (FAR), 48 CFR, chapter 1 and DoD FAR Supplement (DFARS), 48 CFR, chapter 2, containing the published terms in effect on the date of issuance of this Order. Said clauses and the regulations relating to them (hereafter, collectively, FAR provisions) apply to the Order and are hereby incorporated by reference into these Additional Terms and Conditions.

Wherever the texts of FAR clauses in these Additional Terms require, by their terms or for purposes of sense and to provide meaning, the term "Seller" shall be substituted for any reference to "Contractor," and the term "Buyer" shall be substituted for any reference to "Government" or "Contracting Officer," and the term "this Purchase Order" shall be substituted for a reference to "contract" unless otherwise indicated. These provisions are otherwise unchanged except as stated below. Buyer and Seller further agree that all FAR clauses and regulations shall, with respect to the rights, duties and obligations of Buyer and Seller, be interpreted and construed in such manner as to give effect to (1) the contractual relationship between Buyer and Seller under the Order, and (2) the rights of the Government with respect thereto under this Prime Contract from which these provisions are derived.

In the listing of clauses below, FAR clauses bear the prefix 52 and DFARS clauses bear the prefix 252, each according to their respective chapter in Title 48, Code of Federal Regulations. The following FAR and DFARS clauses are applicable to this Order under the conditions and with the qualifications set forth below:



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## Government Contract Provisions from the Federal Acquisition Regulation (FAR)

Title of Clause	FAR
<b>APPLICABLE TO ALL ORDERS:</b>	
Gratuities	52.203-3
Covenant Against Contingent Fees	52.203-5
Security Requirements	52.204-2
Defense Priority and Allocations Requirements	52.211-15
Utilization of Small Business Concerns	52.219-8
Notice to the Government of Labor Dispute	52.222-1
Contract Work Hours and Safety Standards Act-Overtime Compensation	52.222-4
Hazardous Material Identification and Material Safety Data- "Government" means "Government and Buyer;"	52.223-3
Pollution Prevention and Right-to-Know Information (Applicable in contracts that provide for performance on a Federal facility)	52.223-5
Privacy Act	52.224-2
Buy American Act - Supplies	52.225-1
Duty-Free Entry	52.225-8
Authorization and Consent - Alternate 1	52.227-1
Rights in Data - General	52.227-14
Commercial Computer Software-Restricted Rights	52.227-19
Insurance- Work on a Government Installation	52.228-5
Accident Prevention	52.236-13
Change Order Accounting	52.243-6
Competition in Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Special Tooling - In paragraph (c) "Government" means "Government and/or Buyer"	52.245-17
Special Test Equipment - In paragraph (b) (4) "Government means "Government and/or Buyer"	52.245-18
Inspection of Supplies - Fixed-Price	52.246-2
Higher Level Contract Requirement	52.246-11
Responsibility for Supplies	52.246-16
Preference for U.S. Flag Air Carriers	52.247-63
Termination for Convenience of the Government (Fixed-Price)	52.249-2
"Government" shall mean "Buyer." In paragraph (d) the term "45 days" is changed to "90 days." The term "one-year" in paragraph (e) is changed to "six months." The term "90 days" in paragraph (f) is changed to "forty-five days."	
<b>ORDERS OVER \$10,000 ALSO INCLUDE THE FOLLOWING:</b>	
Walsh-Healy Public Contracts Act	52.222-20
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Affirmative Action for Workers with Disabilities	52.222-36
<b>ORDERS OVER \$100,000 ALSO INCLUDE THE FOLLOWING:</b>	
Restrictions on Subcontractor Sales to the Government	52.203-6
Anti-Kickback Procedures (less paragraph (1))	52.203-7
Limitation on Payments to Influence Certain Federal Transactions	52.203-12
Audit and Records-Negotiation	52.215-2
Integrity of Unit Prices (less paragraph b)	52.215-14
Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-35
Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-37
Value Engineering	52.248-1
<b>ORDERS OVER \$550,000 ALSO INCLUDE:</b>	
Small Business Subcontracting Plan-(Note to Seller: This clause requires adoption of small business subcontracting plan and reporting)	52.219-9
<b>UNLESS OTHERWISE EXEMPT ALSO INCLUDES THE FOLLOWING:</b>	
Price Reduction for Defective Cost or Pricing Data	52.215-10
Price Reduction for Defective Cost or Pricing Data-Modifications	52.215-11
Subcontractor Cost or Pricing Data	52.215-12
Subcontractor Cost or Pricing Data-Modifications	52.215-13
<b>APPLICABLE TO COST REIMBURSEMENT, TIME &amp; MATERIAL OR LABOR HOUR ORDERS:</b>	
Facilities Capital Cost of Money	52.215-16
<b>CERTIFICATIONS:</b>	
Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$100,000)	52.203-11
Previous Contracts and Compliance Reports (over \$10,000)	52.222-22
<b>ADDITIONAL CLAUSES:</b>	
Cost Accounting Standards	52.230-2
Disclosure and Consistency of Cost Accounting Practices	52.230-3
Administration of Cost Accounting Standards	52.230-6

## Government Contract Provisions from the Department of Defense FAR Supplement (DFARS)

Title of Clause	DFAR
Disclosure of Information	252.204-7000
Intent to Furnish Precious Metals as Government-Furnished Material	252.208-7000
Hazard Warning Labels	252.223-7001
Buy American Act and Balance of Payments Program	252.225-7001
Preference for Certain Domestic Commodities	252.225-7012
Contractor Counterfeit Electronic Part Detection and Avoidance System	252.246-7007
Preference for Domestic Specialty Metals and Alternate 1	252.225-7014 and (Alt 1)
Restriction on Acquisition of Certain Articles Containing Specialty Metals	252.225-7009
Preference for Domestic Specialty Metals (DEVIATION) and Alternate 1 (DEVIATION)	252.225-7014 (Deviation) and Alt. 1 (Deviation)
(These deviations apply to Purchase Orders under prime contracts entered into after February 28, 2014 ( <a href="http://www.aca.osd.mil/dpap/dars/dfars/html/current/252225.htm">http://www.aca.osd.mil/dpap/dars/dfars/html/current/252225.htm</a> ) See definitions below	
Duty-Free Entry	252.225-7013
Rights in Bid or Proposal Information	252.227-7016
Validation of Restrictive Markings on Technical Data	252.227-7037
Supplemental Cost Principles	252.231-7000
<b>ORDERS OVER \$100,000 ALSO INCLUDE THE FOLLOWING:</b>	
Notification of Anticipated Contract Terminations or Reductions (less paragraph (d) (1))	252.249-7002
<b>ORDERS OVER \$550,000 ALSO INCLUDE THE FOLLOWING:</b>	
Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan	252.219-7003
<b>LOURDES IMPLEMENTATION OF DSMR HIGHLIGHTED ABOVE:</b>	
<b>Specialty Metals means:</b>	
<ul style="list-style-type: none"> <li>Steel with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or containing more than 0.25 percent of any of the following elements: columbium, molybdenum, nickel, titanium, tungsten, or vanadium;</li> <li>Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;</li> <li>Titanium and titanium alloys; or</li> <li>Zirconium and zirconium base alloys.</li> </ul>	
<b>Qualifying Country means:</b>	
<ul style="list-style-type: none"> <li>Any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.</li> </ul>	
<b>THE DOMESTIC SPECIALTY METALS RESTRICTIONS DO NOT APPLY TO:</b>	
<ol style="list-style-type: none"> <li>Specialty Metals melted in a qualifying country.</li> <li>Specialty Metals of de minimis value contained in commercially available of the shelf (COTS) items.</li> <li>Specialty Metals of de minimis value incorporated in certain commercially available electronic components.</li> <li>Specialty Metals in the form of fasteners based on the class, Domestic Non-Availability Determination (DNAD) for fasteners.</li> </ol>	