

**GENERAL PROVISIONS – SHORT FORM –
COMMERCIAL ITEM**



APR-301-NI-C REV A.DOC

1. **CHANGES.** The Buyer may make changes in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) time of delivery. If any such change causes an increase or decrease in the cost of or time required for the performance of this Purchase Order, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within 30 days from the date of receipt by the Seller of a notification of such change.
2. **VARIATION IN QUANTITY.** No variation in the quantity of any item called for by this Purchase Order will be accepted unless such variation has been caused by conditions of loading, shipping or packing or allowances in manufacturing processes.
3. **INSPECTION, REJECTION AND ACCEPTANCE.** (a) All supplies shall be subject to inspection and test by the Buyer, and/or Government inspectors, at all times and places prior to final acceptance by the Buyer. (b) In case any supplies or loss of supplies are defective in material or workmanship, the buyer shall have the right either to reject them or to require their correction. Supplies which have been rejected shall at Seller's expense be removed, or at Buyer's option corrected in place promptly after notice. Removed supplies shall not thereafter be tendered for acceptance without the knowledge and consent of the Buyer. (c) If any inspection or test is made on the premises of the Seller, the Seller shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors. The Buyer reserves the right to charge to the Seller any additional cost of inspection and test when the supplies are not ready at the time such inspection and test are requested by the Seller or when reinspection or retest is necessitated by prior rejection. Failure to inspect and accept or reject supplies shall neither relieve the Seller from responsibility for such supplies in accordance with the Purchase Order requirements, nor impose liability on the Buyer therefor. (d) All returns of defective or rejected supplies shall be at the Seller's risk and expense. Supplies found to be not in accordance with specifications shall be held at Seller's risk. Inspection, failure to inspect, acceptance and/or payment shall not affect any warranty or guaranty expressed or implied herein or elsewhere or any right of the Buyer with respect thereto.
4. **RESPONSIBILITY FOR SUPPLIES.** The Seller shall be responsible for the supplies covered by this contract until they are delivered to the Buyer, regardless of the point of inspection, and the Buyer shall be responsible for the supplies while in possession of the Buyer, except that the Seller shall bear all risks as to rejected or defective supplies after notice thereof in writing is given to Seller.
5. **PAYMENTS, INVOICES AND SHIPPING INSTRUCTIONS.** The Seller shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less any deductions as may otherwise be provided herein. **Late Deliveries.** In addition to any other rights of default specified herein, if Seller's deliveries are behind the agreed schedule, Buyer shall have the option to require Seller to ship via fastest possible shipment but at no extra cost to Buyer.
6. **TERMINATION.** The clause entitled "Termination" appearing in FAR 52.249-1 thru 5 as appropriate is incorporated herein by reference and made a part hereof.
7. **DEFAULT.** The Buyer may by notice of default to the Seller terminate the whole or any part of this contract if (a) the Seller fails to make any delivery of acceptable materials within the time specified herein, or (b) the Seller fails to perform any of the provisions of this contract. Further, the rights of remedies of the Buyer as provided herein shall not be exclusive and are in addition to any other rights and remedies provided by the law and equity elsewhere under this contract.
8. **PATENTS, PATENT INFRINGEMENT, PATENT INDEMNITY, ETC.**
(a) Patent Rights - This Purchase Order included by this reference a patent rights clause containing all provisions of the Patent Rights Clause contained in Buyer's contract under which this Purchase Order is let, to the extent said Buyer's contract requires such clause or grant of patent rights to be included in subcontracts of this nature; and the Seller grants to the Buyer and the Government all such Patent Rights on the material to be delivered hereunder as is required in such Patent Rights Clause to be given to the Government or as is otherwise elsewhere set forth herein. (b) Patent Indemnity - It is agreed by the Seller to fully protect, hold harmless, and indemnify the Buyer and stand all expense or loss including counsel fees from any and all suits of law or in equity, and from all damages, claims, and demands for actual or alleged infringement on any United States or foreign patent, trademark, or copyright. (c) Filing of Patent Applications - The clause entitled "Filing of Patent Applications" set forth in FAR 52.227-10 is incorporated herein by reference and shall be applicable if the Purchase Order is classified or to the extent this Purchase Order covers classified subject matter. (d) Royalty Information - Seller warrants that the total price of the Purchase Order does not include costs or charges for royalties totaling more than \$250.00 unless the Seller has made full disclosure thereof prior to the letting of this Purchase Order. The degree of such disclosure shall be governed by FAR 52.227-6 incorporated herein by reference.
9. **RIGHTS-IN-DATA.** This Purchase Order includes by reference a Data Clause containing all of the provisions of the Data Clause contained in Buyer's contract under which this contract is let; and, the Seller grants to the Buyer and the Government all such rights in the Data delivered here under as is provided in such Data Clause to be given to the Government or as is otherwise specified herein.
10. **WARRANTY.** (a) In addition to all other warranties expressed or implied in law, the Seller warrants that the items delivered hereunder will conform to all specifications, or other descriptions furnished by Buyer and will be merchantable, of good material and workmanship and free from defects. (b) Should the Government require acceptance of items which do not conform to all specifications or other description, payment will be made at an equitable reduction in price. (c) This warranty shall survive acceptance and run to Buyer, its successors, assigns, customers and users of its products.
11. **BUYER-OWNED PROPERTY.** Seller shall not use, reproduce, or disclose the contents of any designs, data, information, drawings, etc. delivered hereunder except as is necessary for the performance of this Purchase Order.
12. **COMPLIANCE WITH LAW.** Seller must comply with all applicable laws, government orders and regulations in performing this Purchase Order. Except as provided under the "Disputes" clause of this Purchase Order, the Purchase Order is a contract made in the State of New Mexico and governed by the laws thereof.
13. **ACKNOWLEDGMENTS, AMENDMENTS, AND EXCEPTIONS.** The Purchase Order shall be an enforceable contract on the terms stated herein. No modification or amendment of this Purchase Order shall be binding unless made by supplement to this Purchase Order signed by Buyer. The terms and conditions herein shall prevail against all contrary conditions appearing on acknowledgments, acceptances or invoices unless specifically agreed to in writing by an authorized officer of the Buyer.
14. **NON-DISCRIMINATION IN EMPLOYMENT.** Unless otherwise excepted under Executive Order 11246 as amended or unless otherwise exempt under applicable rules, regulations, or orders of the President's Committee on Equal Employment, this Purchase Order and the Seller are subject to the provisions of the Non-discrimination in Employment Clause set forth in FAR 52.222-26, such clause being incorporated herein by this reference, it being understood that the word "Contractor" contained therein means "the Seller". Further, Seller agrees to include the provisions of said clause in all orders or subcontracts placed hereunder.
15. **LIENS.** All items to be delivered hereunder, and all property to be returned to Buyer, shall be free and clear of any and all liens and encumbrances whatsoever.
16. **FEDERAL ACQUISITION REGULATION.** All references to "FAR" shall be the Federal Acquisition Regulations in effect on the effective date of this Purchase Order and the paragraphs referenced herein shall be the paragraph as numbered herein or as may be otherwise renumbered. Whenever the word "Government" appears in any such reference, it shall be deemed to be, "Government and Buyer"; whenever the word "Contractor" appears, it shall be "Seller" and whenever the words "Contracting Officer" appear it shall be "Buyer".
17. **STATUTES AND REGULATIONS.** To the extent applicable under the appropriate statute or regulations and the Buyer's contract under which this Purchase Order is let, this Purchase Order and any tier subcontract let hereunder is subject to each of the following statutes or provisions and/or clauses of the Federal Acquisition Regulations which is incorporated herein by this reference.
52.244-6. SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2001). (a) Definitions. As used in this clause—"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract" 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)(1) The following clauses shall be flowed down to subcontracts for commercial items: (i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities. (ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246). (iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)). (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793). (v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUNE 2000) (46 U.S.C. Appx1241) (flowdown not required for subcontracts awarded beginning May 1, 1996). (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations. (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.