

General Dynamics NASSCO-Mayport
PURCHASE ORDER GENERAL TERMS AND CONDITIONS
December 6, 2016

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PART A: PERFORMANCE IN GENERAL

1. General Scope

These terms and conditions apply to goods, services, consulting services, and equipment rental (collectively referred to as the "Contract Work").

2. General Definitions

- (a) **"Buyer"** means Metro Machine Corp., d/b/a General Dynamics NASSCO-Mayport (or "NASSCO-Mayport", as the context requires) in the context of an equipment rental.
- (b) **"Contract"** means the Purchase Order or other written agreement between Buyer and Seller, including these Terms and Conditions, the Specifications, and any other documents incorporated by referenced by the Purchase Order.
- (c) **"Contract Price"** means the total price to be paid by Buyer to Seller in consideration of Seller's full performance of this Contract, as set forth in this Contract.
- (d) **"Contract Products"** means the products, goods, material, supplies, equipment, articles or data to be furnished by Seller. In the context of an equipment rental, "Contract Products" shall mean "rental property".
- (e) **"Contract Work"** means the goods and/or services which are the subject of this Contract. Unless otherwise specifically defined, "Contract Work" includes any Contract Products.
- (f) **"Purchase Order"** means any agreement from Buyer for Contract Products or Contract Work that references these and any other Terms and Conditions.
- (g) **"Seller"** means the individual or entity identified on the face of the Purchase Order by whom the Contract Work is to be performed or who will supply the Contract Products, as well as all of their directors, officers, and employees.
- (h) **"Specifications"** means the technical specifications, plans, data, drawings, diagrams, schedules and any other documents that describe the Contract Work.

3. Assignment

Neither this Contract nor the consideration due hereunder may be assigned by Seller, in whole or in part, without Buyer's prior written consent.

4. Changes

- (a) Buyer may at any time, by written order, make changes to this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, Buyer shall make an equitable adjustment in the Contract Price, the performance or delivery schedule, or both, and shall so modify this Contract subject to acceptance of Seller's justification of cost of change.
- (b) Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or exchange information with Seller's personnel concerning the Contract Work. Such actions, however, shall not be deemed to be a change under this Changes paragraph and shall not be the basis for any equitable adjustment. Only an authorized representative of Buyer's Purchasing Department may change this Contract.
- (c) Within a reasonable period of time, proposed by Buyer from the date of receipt of any written change order, Seller shall submit to Buyer a detailed written estimate of the impact of the change on the Contract Price, the performance or delivery schedule, and the performance capabilities of any Contract Products. Upon receipt of this estimate, Buyer shall begin good faith negotiations with Seller to determine an equitable adjustment to the Contract.
- (d) The failure of the parties to agree to any equitable adjustment shall be a dispute under the Disputes section of this Contract. Nothing in this Changes section, however, shall excuse Seller from proceeding with diligent performance of this Contract as changed.

5. Compliance with Conflict Mineral Requirements

- (a) Seller certifies that, regardless of whether Seller is publicly traded or not, Seller will notify Buyer in writing if Seller provides any Contract Work containing or using Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ("the Rule"). This written notification shall comply with all SEC Conflict Minerals disclosure requirements defined in the aforementioned Rule.
- (b) Seller certifies and warrants that Contract Work that has been or will be delivered to Buyer by Seller under the Contract since January 31, 2013, shall comply with all parts of the Rule.

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- (c) Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Buyer pursuant to the Contract originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Buyer for the Contract, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.
- (d) Seller agrees that it shall require its own subcontractors and Seller (at any tier in the supply chain for a product delivered to Buyer under the Contract) to furnish information to Seller necessary to support Seller's obligations under this Clause.
- (e) Seller will maintain records reviewable by Buyer to support its certifications above.
- (f) Seller acknowledges that Buyer may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.
- (g) If Buyer determines that any certification made by Seller under this Clause is inaccurate or incomplete in any respect, then Buyer may terminate the Contract pursuant to the provision of the Contract named "Default; Termination for Cause."

6. Compliance with Ethics

Seller shall comply with the General Dynamics NASSCO-Mayport' *Standard of Business and Ethics and Conduct*, which can be found at <http://www.nassconorfolk.com/manuals/GeneralDynamicsBlueBook.pdf> and the rules and regulations referenced therein, including but not limited to the U.S. Foreign Corrupt Practices Act. In this respect, Seller has an ethical obligation and legal responsibility to warn NASSCO-Mayport of any illegal conduct, or acts of impropriety, which Seller discovers, or reasonably should have discovered, in the course of performing this Contract Work. Seller shall defend, indemnify and hold NASSCO-Mayport harmless from any and all claims and liabilities resulting from any failure to so comply.

7. Compliance with Law

Seller shall fully comply with all applicable laws, rules, regulations, codes, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, exportation, licensing, approval or certification of the Contract Work, or rental property, including but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health and safety and motor vehicle safety. **Seller and its Suppliers shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.** Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from any failure to so comply as set forth in the Indemnity Section.

8. Confidentiality of Data and Information

Information furnished by Buyer and identified by Buyer as "NASSCO-Mayport" "Proprietary/Trade Secret Information" or otherwise identified as subject to restricted access or dissemination shall be and remain property of Buyer; shall not be duplicated, used or disclosed to third parties except for the purpose and to the extent necessary for the performance of this Contract; and upon completion of this Contract, shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Absent contrary instructions, Seller shall destroy all NASSCO-Mayport proprietary or confidential data and information within one (1) year after termination or completion of the Purchase Order or Contract and provide written acknowledgment to Buyer of such destruction. Seller shall take all reasonable precautions to maintain in confidence all such information, including the imposition upon any person, firm, or corporation to whom disclosure of such information is made in the course of performance under this Contract of conditions relating to the confidential treatment thereof to the same effect as those imposed upon Seller herein. The obligations imposed upon Seller herein shall not apply to such information that is already known to Seller, is lawfully obtained or obtainable by Seller from another source, is or comes into the public domain other than as a result of breach of this Confidentiality of Data and Information Section.

9. Contract Acceptance, Integration and Modification

- (a) Seller shall strictly perform this Contract. Any performance, whatsoever, by Seller of any portion of this Contract, without regard to its value, shall constitute complete acceptance of the Contract, including without limitation, these Terms and Conditions. Seller agrees that a signed acknowledgement of these Terms and Conditions is not a condition precedent to the full enforceability of this Contract, including these Terms and Conditions, by NASSCO-Mayport against Seller.
- (b) Any terms proposed in the acceptance of this Contract, which add to, vary from, or conflict with the terms and conditions of this Contract, are hereby objected to and shall be void.

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- (c) This Contract constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, between the parties. No terms other than those set forth herein or in the Contract shall apply. Seller represents that, in entering this Contract, it does not rely on any previous oral or implied representation, inducement, or understanding of any kind. This Contract shall not be varied, supplemented, qualified or interpreted by any prior course of dealing, usage of trade or course of performance between Seller and Buyer, and shall be interpreted without regard to which party is deemed to have drafted this Contract.
- (d) This Contract may be amended or modified only by a written instrument executed by authorized representatives of both Buyer and Seller. THIS INCLUDES ANY AND ALL CHANGES TO THE CONTRACT.
- (e) This Contract shall be governed by and interpreted under the laws of the Commonwealth of Virginia, excluding Virginia's conflict or choice of law rules. The rights and remedies reserved to Buyer in this Contract are cumulative with, and in addition to, all other or further rights and remedies provided in law or equity.
- (f) If any one or more of the provisions of this Contract is found to be invalid, the remaining provisions shall not be affected, and this Contract shall be interpreted as if not containing such provisions. Paragraph and section headings are for administrative convenience only and shall not be used to interpret this Contract.

10. Disputes

- (a) Unless there are exigent circumstances and/or the imminent disclosure of information required to be protected pursuant to the Confidentiality Section of this Contract is evident, any dispute between Buyer and Seller arising out of this Contract shall be resolved by means of the following procedure:
 - i. The dispute initially shall be referred to each party's senior executive with responsibility for this Contract, who shall negotiate in good faith to reach a resolution of the dispute.
 - ii. In the absence of a resolution being achieved within thirty (30) days after either Buyer or Seller offers to conduct the negotiations in subparagraph (a)(i), above, either party may take appropriate action pursuant to subparagraph (b) hereof.
- (b) Any dispute solely in connection with or arising out of this Contract not resolved in accordance with paragraph (a), above, shall be resolved by binding arbitration which may be initiated by either party in Norfolk, Virginia, and both parties consent to such exclusive jurisdiction and venue. The parties agree to negotiate in good faith to select three (3) arbitrators and agree on discovery rules. Each party shall select one (1) arbitrator and both parties shall agree on a third arbitrator. If the parties are unable to agree on a third arbitrator or discovery rules within thirty (30) days, then the arbitration shall be conducted in accordance with the American Arbitration Association's rules for commercial arbitrations utilizing one (1) arbitrator. In resolving any dispute under this Contract, each party shall bear its own attorneys' fees and costs, without regard to any law or statute to the contrary.
- (c) Any dispute solely in connection with or arising out of the Prime Contract with the Government or in connection with or arising out of both the Prime Contract with the Government and this Contract not resolved in accordance with paragraph (a) or (b), above, shall be resolved by means of the following procedure:
 - i. Seller may submit to Buyer a claim or request for equitable adjustment in accordance with the dispute resolution provisions of the Prime Contract, copies of which will be provided upon request. Buyer may, upon Seller's request and in Buyer's sole discretion, submit such claim or request for equitable adjustment to the Government through its Contracting Officer for resolution, including a Contracting Officer's final decision in the case of a claim. Such submission, if not rejected for lack of jurisdiction, shall constitute Seller's sole remedy and shall be a bar to Seller's proceeding directly against Buyer in any forum. Seller's compliance with the dispute resolution provisions of the Prime Contract is a condition precedent to Buyer's submission of Seller's claim or request for equitable adjustment to the Government.
 - ii. The resolution of any claim or request for equitable adjustment by the Government through its Contracting Officer shall be conclusive and binding on Seller to the extent conclusive and binding on Buyer, subject to Seller's rights of appeal as set forth below.
 - iii. If Seller is dissatisfied with the final decision of the Contracting Officer with respect to any claim, Seller may appeal such final decision in accordance with the dispute resolution provisions of the Prime Contract, using Buyer's name, if such appeal does not affect Buyer's rights independent of Seller's claim. If the final decision affects Buyer's independent rights, Seller may appeal in Buyer's name only with Buyer's written consent.
 - iv. Requests for equitable adjustment or claims that are not submitted to the Government or which are dismissed by the Government for lack of jurisdiction may be resolved in accordance with paragraph (b) above.
 - v. Nothing said, written or done by Buyer in the course of prosecuting any submission to the Government on behalf of Seller shall be construed as an admission or declaration against Buyer's interest in any other proceedings.
- (d) In resolving any dispute under this Contract, each party shall bear its own attorneys' fees and costs. The parties agree that any judgment upon award may be entered in any court having jurisdiction.

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- (e) Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.

11. Export Control Compliance and Cooperation

Seller shall comply with the Export Administration Regulations (15 CFR 730—774) and the regulations issued by the Office of Foreign Assets Control (31 CFR Chapter V), all other applicable laws, regulations and orders that control the export of commercial and dual-use items and associated technology. In addition, Seller shall inform Buyer in writing of the name and citizenship of each employee of Seller and Seller's subcontractors at any tier who will participate in the performance of this Contract at Buyer's facilities who is not a United States citizen or lawful permanent resident and the name and address of each subcontractor at any tier who will participate in such performance that is not organized under the laws of any state of the United States. Seller shall cooperate fully with Buyer in applying for any export license or approval, which may be required for any such employee or subcontractor and in justifying and documenting any license or approval exception. Seller shall not permit any such employee or subcontractor to participate in the performance of this Contract over Buyer's objection based on noncompliance with this Export Control Compliance and Cooperation section.

12. Force Majeure

Either party shall provide notice to the other party of a Force Majeure event no later than three (3) days after such first party has reason to know of the existence of the Force Majeure event. This notice shall include the estimated impact on the performance or delivery schedule. No extension of Seller's delivery or performance schedule shall be considered unless Buyer has received this notice. Seller shall likewise immediately provide notice to Buyer when the Force Majeure event has ended, and such notice shall include a statement of the amount of delay in the performance or delivery schedule caused by such event. "Force Majeure" shall mean any event or occurrence beyond the reasonable control and without the fault or negligence of either party, which by exercise of due diligence, such party shall not have been able to avoid or overcome. Such events and occurrences may include, by way of example, natural disasters, floods, windstorms, unusually severe weather and other acts of God, fires, explosions, riots, wars, sabotage, power failures, and acts of government. Failures or delays caused by a Force Majeure are neither compensable nor a breach, under the terms of this Contract.

13. Gratuities and Kickbacks

In addition to the ethical requirements set forth in the "Compliance with Ethics" section, no gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller to any employee of Buyer with a view towards securing more favorable treatment as a subcontractor or supplier.

14. Indemnity

Seller shall defend, indemnify, save and hold Buyer, its parent company, affiliated companies, directors, officers, agents and employees, free and harmless from and against all claims, demands, causes of action, damages and liabilities of any nature, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees) for (i) death or injury to any person or persons (including, but not limited to, agents and employees of Seller and its subcontractors) and for damages characterized as special, direct, consequential, loss of consortium, or future earnings); (ii) damage or loss of any property (including, but not limited to, loss of use, lost profits, or diminution in value) arising directly or indirectly out of or in connection with Seller's or its subcontractors' performance of this Contract, (iii) claims by Seller, its employees or Seller's subcontractors or their employees for wages, benefits and other compensation; and by claims by governmental agencies or others for taxes or contributions allegedly due by reason of Seller or its subcontractor performing Contract Work; and (iv) infringement of any third party intellectual property rights, in all including, without limitation, claims, demands, actions, damages and liabilities based in whole or in part on the negligence or other theory of liability of Seller or Seller's subcontractors, and excluding only claims and liabilities based on Buyer's sole negligence or willful misconduct. This provision survives termination of the Contract. Buyer may assign its right to be indemnified hereunder.

15. Independent Contractor

Seller is an independent contractor. Seller assumes full and sole responsibility for the payment of all compensation, expenses, benefits (including, but not limited to, vacation pay, overtime, training, travel allowances and reimbursements, workers' compensation, pension and/or retirement, medical and/or health benefits), state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings.

16. Inspection and Acceptance

The Contract Work, including any documents, materials, equipment, and facilities, shall at all times be available for inspection and testing by Buyer. Buyer's inspection or failure to inspect shall not relieve Seller of any obligations or liability under this Contract, nor shall it constitute acceptance of the Contract Work. Seller shall repair, re-perform or replace any nonconforming Contract Work at Seller's expense within ten (10) days of Buyer's written notice of nonconformance. If Seller has not repaired, re-performed or replaced such nonconforming Contract Work within the ten (10)-day period, Buyer may repair, re-perform or replace such nonconforming Contract Work at Seller's expense. The Contract Work shall be accepted when Buyer determines that it conforms to this Contract, and such acceptance shall be conclusive of conformance except for latent defects, fraud or gross negligence.

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17. Insurance

Unless otherwise stated in the Contract, and without prejudice to Buyer's rights and Seller's indemnity obligations under Indemnity Section of this Contract, Seller shall keep and maintain in effect at its sole cost and expense the following policies of insurance:

- (a) Commercial General Liability insurance coverage with the following limits per occurrence:
 - i. General Aggregate, \$2,000,000
 - ii. Products and Completed Operations Aggregate \$1,000,000
 - iii. Personal and Advertising Injury \$1,000,000
 - iv. Each Occurrence \$1,000,000
 - v. Property Damage \$50,000
 - vi. Medical Expenses \$5,000
- (b) Commercial Automobile Liability insurance coverage for owned, hired, and non-owned vehicles, \$1,000,000 per occurrence.
- (c) Workers' Compensation and Longshore and Harbor (USL&H) Workers' Compensation Act insurance with the following limits:
 - i. Employer's Liability Each Accident \$500,000
 - ii. Employer's Liability Disease Policy \$500,000
 - iii. Employer's Liability Each Employee \$500,000
- (d) Umbrella Excess Liability, General Aggregate and Each Occurrence, \$5,000,000. This coverage shall be in excess of the above listed insurance coverages.
- (e) For Contract Work consisting of engineering services, consulting, construction management or construction services, Seller shall keep and maintain in effect at its sole cost and expense professional liability (errors and omissions) coverage with minimum limits of liability of \$1,000,000 per occurrence and \$1,000,000 in the aggregate.
- (f) NASSCO-Mayport shall be listed as the Certificate Holder and identified as the Additional Insured under the General Liability Policy. Certificate Holder shall read:

Metro Machine Corp.
C/O General Dynamics NASSCO-Mayport
200 Ligon Street
Norfolk, VA 23523
- (g) Each such policy shall be underwritten by an insurance company satisfactory to Buyer; shall provide that it is primary insurance to, and noncontributing with, any other insurance carried by Buyer; and shall obligate the insurer to give Buyer not less than thirty (30) days prior written notice in the event of policy cancellation or any material change therein. Certificates evidencing such policies, in a form satisfactory to Buyer, shall be delivered to Buyer upon issuance of the Contract, and renewals thereof shall be sent to Buyer at least ten (10) days prior to the expiration of the respective policy terms. The policies referred to above in subparagraphs (a) (1) and (a) (2) shall be endorsed to name NASSCO-Mayport as an "additional insured," and the certificates provided to Buyer shall reflect such endorsement. The policies referred to above in subparagraphs (a) (3) and (a) (4) shall contain a waiver of subrogation in favor of Buyer.
- (h) Notices regarding insurance policies shall be provided in writing and shall be deemed delivered five (5) days after deposit in the U.S. Mail, postage prepaid, certified mail and return receipt requested, when addressed to General Dynamics NASSCO-Mayport, Attention: Director Supply Chain Management 200 Ligon Street, Norfolk, VA 23523.
- (i) The insurance coverage limits stated above are minimum insurance coverage requirements, not limits of Seller's liability. Notwithstanding the above-required insurance policies, Seller shall be obligated for the full and total amount of any damage, injury, expense or loss.

18. Invoices, Payment and Taxes

- (a) Invoices shall include: the Purchase Order number; the invoice number; description of all Contract Work performed; rental property furnished; the dates of performance or date(s) on which the rental property was delivered or retrieved; comprehensive, itemized prices; prior payments received; terms; and discounts. Unless otherwise provided, any cash discount period shall commence on the date of receipt of Seller's invoice. Incorrect and incomplete invoices shall be returned for correction and shall delay the commencement of Buyer's obligation to pay for the Contract Work and any discount period, until a corrected invoice is received by Buyer. Buyer shall pay Seller only for the complete, proper and

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timely performance of this Contract, and Buyer shall have the right to withhold payment for any failure of Seller to strictly comply with this Contract. No payment of any portion of the Contract Price shall constitute acceptance of the Contract Work or of Seller's performance.

- (b) Unless otherwise provided in this Contract, payment shall be net thirty (30) days from the latest of the following: (i) Buyer's receipt of a proper invoice; (ii) scheduled delivery of the Contract Work; or (iii) actual delivery of the Contract Work. Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable United States, state, and local taxes, duties, tariffs, and similar fees imposed by any government. Credits resulting or arising from this Contract, including, but not limited to, trade credits, export credits or refund of duties, taxes or fees, belong to Buyer. Seller shall provide all information necessary to permit Buyer to receive these credits.
- (d) Payment shall not be construed as acceptance of the Contract Work or Contract Products or waiver of any term or condition of this Contract.
- (e) To be timely, all invoices must be received by Buyer within thirty (30) days after completion of the Contract Work. Invoices received later than sixty (60) days after completion of the Contract Work are deemed rejected and void and Seller hereby waives the right to payment of these invoices.

19. Liens

- (a) Seller waives any and all rights to any lien against Buyer by Seller or Seller's subcontractors.
- (b) Buyer shall have the right to withhold any payment until Seller shall furnish, as requested, current written releases and waivers of all rights to claim or file liens, properly executed by Seller and its subcontractors. Seller's acceptance of full payment of the Contract Price shall constitute satisfaction in full and release of all claims or demands of Seller and its subcontractors against Buyer arising out of or connected with this Contract. If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay such claims and deduct such payments from funds due Seller hereunder or, if such claims be disputed, withhold sufficient funds to pay such claims until they are resolved. Seller shall immediately discharge or cause to be discharged any lien or charge of any kind, which at any time is filed against the property of Buyer with respect to, or arising from, the performance of the Contract Work. If any such lien or charge is not immediately discharged, Buyer may discharge or cause to be discharged such lien or charge at the expense of Seller.

20. Limitation on Liability

EXCEPT FOR THE RIGHTS AND OBLIGATIONS SET FORTH IN THE INDEMNIFICATION AND WARRANTY CLAUSES HEREIN, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR: (i) PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER, OR RELATING TO, THIS CONTRACT; OR (ii) INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF USE, DELAY OR TIME RELATED DAMAGES, LOSS OF INCOME, LOST PROFITS OR LOSS OF ANTICIPATED PROFITS, LOST BUSINESS, LOSS OF BUSINESS REPUTATION, OR LOSS OF BUSINESS OPPORTUNITIES, UNREALIZED SAVINGS, ANY AND ALL ATTORNEYS' FEES AND COSTS) ARISING UNDER, OR RELATING TO THIS CONTRACT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND REGARDLESS OF WHETHER BUYER WAS ADVISED OR, KNEW OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES, TO BUYER'S BENEFIT, IF BUYER FURNISHES GOODS OR SERVICES TO THE SELLER, SELLER AGREES TO AND DOES WAIVE ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY FOR FITNESS OR FOR A PARTICULAR PURPOSE THAT MAY FLOW TO IT FROM BUYER.

21. Loss, Destruction or Damage of Rental Property

Buyer shall not be liable for the loss of or damage to the rental property unless directly caused by Buyer's negligence or intentional misconduct in the care, operation or use of the rental property during the term of this Contract. Seller shall not have, or be entitled to make, any claim for any such loss or damage unless Seller gives Buyer: (a) written notice of any nature, extent and amount of such loss or damage within forty-eight (48) hours after Seller retrieves the rental property; and (b) the opportunity to inspect the rental property within seven (7) days after retrieval. In no event shall Buyer be liable for loss of rent or for any other consequential damages.

22. New Materials and Authorized Sources

- (a) Seller represents and warrants to Buyer that the Contract Products provided are new (not used or reconditioned) and not of such an age or so deteriorated as to impair their usefulness or safety. If Seller intends to provide used or reconditioned Contract Products, Seller shall notify Buyer in writing and obtain advanced written authorization from Buyer to use such used or reconditioned Contract Products.
- (b) Seller shall only purchase Contract Products: (i) directly from the Original Component Manufacturer (OCM) or Original

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Equipment Manufacturer (OEM); or (ii) from a distributor or other source that purchases directly from the OCM or OEM and is authorized, franchised or certified by the OCM or OEM. If Seller purchases from sources that are not authorized, franchised or certified sources, Seller shall notify Buyer in writing and obtain advanced written consent from Buyer to use such Contract Products.

23. No Advertising

Seller shall not, in any manner, advertise or publish the fact that Seller has contracted to perform the Contract Work or supply Contract Products or use the service mark "NASSCO-Mayport" or mention "National Steel and Shipbuilding Company" in any advertising or promotional materials without Buyer's prior express written consent.

24. No Hire

Buyer and Seller agree that during the term of the Contract, including extensions or modifications thereto, and for an additional twelve (12) months following this period, neither Buyer nor Seller will actively recruit, solicit, nor suggest application to permanent employees of either party without the prior written approval of the party whose employee is being considered for employment. This Section does not prohibit any employee from responding to or pursuing employment opportunities through normal media channels, i.e., newspapers, professional journals, internet sites, etc., so long as such activities are not an attempt to avoid the intent of this Section. In the event of a breach of this Section, the breaching party shall pay to the other the sum of twenty-five percent (25%) of the solicited employee's annual salary by the hiring company as a conversion fee.

25. Non-waiver

Buyer's waiver of any provision of this Contract shall not constitute waiver of that provision in any later circumstances or waiver of any other Contract provision.

26. Notices

Required notices shall be in writing and shall be deemed effective when served personally; delivered by courier service (with proof of delivery); successfully transmitted by fax (with confirmation of receipt); or deposited in the U.S. Mail, first class postage prepaid, addressed as follows:

To Seller:

As indicated on face of the Purchase Order

To Buyer:

General Dynamics NASSCO-Mayport
599Wonderwood Drive
Jacksonville Florida 32233
Attn: Purchasing Manager

27. Order of Precedence

In the event of any conflict or inconsistency between the provisions of this Contract, wherever appearing, any conflict or inconsistency shall be resolved by giving precedence to the following documents in the order below:

- (a) The provisions on the face of the Purchase Order;
- (b) These General Terms and Conditions;
- (c) Special Terms and Conditions, if any;
- (d) The specifications, and within the specifications, specifications shall prevail over drawings;
- (e) and other documents incorporated by reference into this Contract.

28. Packing and Shipment

Deliveries shall be made as specified, without additional charge for boxing, crating, carting or storage, unless otherwise specified and shall meet the following requirements:

- (a) In accordance with the requirements of common carriers, Contract Products shall be suitably packaged to secure the lowest transportation costs and to ensure against damage from transportation or weather.
- (b) Contract Products must be reasonably and adequately preserved and protected for storage at Buyer's facilities, and for handling and protection.
- (c) The Purchase Order number, Purchase Order line item number must be plainly marked on all packages, bills of lading and invoices.
- (d) Packing lists shall accompany each shipment listing all material included in the shipment. Buyer's count or weight shall be final and conclusive for shipments not accompanied by packing lists.
- (e) If shipment is from outside of the U.S., pallets must be pest free, and preferably use heat (not chemically) treated bark free

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wood.

- (f) If Seller ships via ocean in sealed Less-Than Container Load (LCL), Full Container Load (FCL), or break-bulk shipments arriving at U.S. seaports from non-U.S. countries, then Seller must provide NASSCO-Mayport's Logistics Department with U.S. Customs 10+2 importation data using the Importer Security Filing-Form 10 in accordance with the instructions available on the internet at:

www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/

- (g) The 10+2 information must be sent to NASSCO-Mayport's Logistics Department three to four (3-4) days prior to vessel departure from the port of origin. In addition, updates and corrections must be provided to NASSCO-Mayport's Logistics Department at least three to four (3-4) business days prior to the vessel arriving in a U.S. destination port. Expediting costs to free-up shipments with missing or late 10+2 documentation will be charged to Seller at Buyer's option.

29. Payment Bonds

Upon Buyer's sole discretion when a determination is made that Seller is unable to pay all of its suppliers and subcontractors in a timely manner or is unable to assure timely performance, Buyer may request, and upon such request Seller shall provide, payment (labor and material) bonds in amounts designated by Buyer and issued by surety companies acceptable to Buyer. Seller's failure to provide such bonds upon request shall constitute a material breach of this Contract.

30. Pricing

Unless otherwise specified in the Contract, all pricing agreed to by the parties shall be firm fixed pricing, and Seller shall be wholly responsible for providing the Contract Work at the agreed upon price.

31. Property Rights in the Contract Work

All data and materials prepared or developed by Seller in connection with the performance of the Contract Work shall be Buyer's exclusive property and shall be provided to Buyer upon completion of performance of this Contract, upon termination of this Contract, or upon Buyer's earlier request.

32. Quality; Remediation Plan Request

- (a) Seller shall provide and maintain a commercially reasonable quality control system that complies with the quality control requirements of this Contract. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer.
- (b) Seller shall notify Buyer of any facts or occurrence that may increase the cost of, or time required for, performance of this Contract or which may cause the Contract Work to fail to conform to this Contract. Seller shall provide such notification within three (3) days upon the manifestation of such facts or occurrence.
- (c) Buyer may at any time issue to Seller a Remediation Plan Request that identifies any actual or potential failure of Seller to perform its obligations under this Contract, and that requests information from Seller, including, but not limited to, a factual explanation, a discussion of corrective action, and a schedule of performance. Seller shall provide a response reply in writing to any Remediation Plan Request within ten (10) days of receipt.

33. Remedies

All remedies are cumulative, and the exercise of a remedy conferred by this Contract or in law or equity shall not preclude the exercise of any other remedy under this Contract or in law or equity.

34. Scope of Performance

- (a) For Contract Products, if the words "or equal" are used in the Contract or specifications, proposed "equals" must be approved by Buyer in its sole discretion in writing prior to Seller delivering the same to Buyer. Seller shall perform for Buyer the Contract Work described by this Contract. Unless otherwise agreed to in writing, Seller shall provide at the location where the Contract Work is to be performed all labor, materials, equipment, tools and supervision, and Seller shall bear all items of expense for these items. Seller shall perform the Contract Work to the standards of care, skill and diligence, professional or otherwise, normally provided by a competent person when supplying goods or performing services identical or substantially similar to the Contract Work hereunder.
- (b) Seller shall provide all necessary material, equipment and labor to supply the Contract Products in strict conformity with the specifications. Seller shall make no changes in the specifications without Buyer's written consent, and shall not substitute materials for those specified without Buyer's written approval. The Contract Products and their components shall be new and of suitable grade for their intended purpose. Upon Buyer's request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Products.
- (c) All deliverables provided by Seller pursuant to the Contract shall conform in all material respects to the Contract, including without limitation all specifications.

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35. Setoffs/Back charges

Buyer may in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following:

- (a) Seller's failure to comply with any provision of this Contract or Seller's acts or omissions in the performance of any part of this Contract, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- (b) Correction of defective or nonconforming work by redesign, repair, rework or replacement or other appropriate means when Seller states, or indicates, that it is unable or unwilling to proceed with correction action in a reasonable time to support Buyer's in-yard production need; and/or
- (c) Buyer may in addition to any other amounts to be retained hereunder, retain any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following:
- (d) The cost of back charge work shall include:
 - i. Incurred labor costs including all payroll additives;
 - ii. Incurred net delivered material costs;
 - iii. Incurred lower-tier supplier and Seller costs directly related to performing the corrective action;
 - iv. Expediting costs beyond those normally provided in the normal course of the Contract when required to meet the Project schedule;
 - v. Application of relevant manufacturing and material overhead and SG&A expense to the work performed by Buyer.

36. Shelf Life Requirements

For Contract Products with a manufacturer's specified expiration date, Seller shall clearly mark the expiration date or the manufacture date on each individual item in each carton or box. NASSCO-Mayport prefers the expiration date to be marked in MM/DD/YYYY format, but will accept manufacture date and other date formats. Each carton or box shall contain Contract Products with only one expiration date. Seller shall ship such Contract Products timed to arrive on NASSCO-Mayport receiving docks with no less than eighty-five percent (85%) of the specified shelf life remaining unless otherwise approved in writing by Buyer.

37. Standard of Performance

- (a) Seller shall perform the Contract Work using reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by reputable similar persons or entities in providing the same or similar services under similar circumstances. Seller is on notice that Buyer is relying on the care, skill, diligence and judgment exercised by Seller in performing the Contract Work.
- (b) Seller shall be responsible to Buyer for acts and omissions of Seller's employees, subcontractors, and their agents and employees, and other persons, including engineers, and other design professionals, performing any portion of Seller's obligations under this Contract.
- (c) If Seller subcontracts any portion of the Contract Work, Seller shall provide Buyer with the name and address of such subcontractor prior to executing such subcontract. Buyer may decline the usage of such subcontractor based on Buyer's independent evaluation of subcontractor's qualifications.
- (d) The Contract Products and their components shall be new and of suitable grade of their respective kinds for their purpose. Upon Buyer's request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Products.
- (e) Design services required by this Contract shall be performed by qualified engineers and other design professionals, who are properly licensed. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of Seller.

38. Submittals and Approvals

- (a) Seller shall promptly submit to Buyer all documents that require Buyer's review and approval, and Buyer shall promptly approve or reject Seller's submittals.
- (b) Approvals provided by Buyer under this Contract, however, shall not relieve Seller of its obligation to comply with all terms of this Contract and shall not impose upon Buyer any obligation or liability that Buyer would not have had in the absence of such approvals.

39. Survival

If this Contract expires, is completed or is terminated, Seller shall not be relieved of those obligations contained in the following

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provisions:

Buyer's Medical Treatment

Compliance with Ethics Compliance with Laws

Confidentiality of Data and Information

Contract Acceptance, Integration and Modification Delivery and Retrieval of Rental Property Disputes

Environmental

Export Control Compliance Indemnity

Insurance

Limitation on Liability No Advertising

No Hire Non-Waiver

Personal Information Privacy Protection Property Rights in the Contract Remedies

Setoff/Back charges Survival Termination

Third Party Rights

40. Termination

- (a) Buyer may terminate this Contract for convenience at any time with ten (10) days prior written notice ("Termination Date"). In the event of such termination for convenience, Buyer shall pay Seller for Contract Work properly performed up to the date of termination.
- (b) Buyer may terminate this Contract for default if Seller: (i) fails to assure timely performance; (ii) fails to perform on time; (iii) ceases performance prior to completion of this Contract; (iv) evidences insolvency or financial inability to perform; or (v.) fails to cure the material breach of any other provision of this Contract within ten (10) days of notice of such breach.
- (c) In the event Buyer terminates this Contract in whole or in part, Buyer may procure, upon such terms and in such manner as Buyer may reasonably determine, services similar to the Contract Work and/or products similar to the Contract Products specified herein, and Seller shall be liable to Buyer for any excess costs for such similar services and/or products. If this Contract is terminated only in part, Seller shall continue the performance of this Contract to the extent not terminated.
- (d) Upon termination of this Contract, Seller shall immediately cease performance of the Contract Work; shall immediately return to Buyer all information, materials and documents acquired from Buyer; and shall immediately provide to Buyer all information, materials and documents prepared or developed by Seller in connection with performance of this Contract. Further, Seller's obligations as set forth in the Property Rights in the Contract Work and the Confidentiality of Data and Information section herein shall survive any termination of this Contract.

41. Third Party Rights

This Contract is intended solely for the benefit of Buyer and Seller and is not intended for the use or benefit of any other party. Except as set forth in the Indemnity Section, nothing contained in this Contract is intended to make any person or entity that is not a signatory to this Contract a third party beneficiary of any right created by this Contract.

42. Time of Performance

Seller shall perform this Contract in a diligent manner and in no event later than the time(s) specified on the face of the Purchase Order. Time of performance specified in this Contract is of the essence of this Contract. If at any time it reasonably appears to Buyer that Seller is failing to make progress, such that performance may not be completed in accordance with this Contract, Seller shall, within seven (7) days of a written request by Buyer, assure timely performance and represent to Buyer in writing Seller's best completion date. If the represented completion date is not within the original time for completion of performance of this Contract, Buyer may terminate this Contract for default in accordance with the Termination section. Buyer shall further have the right, but not the duty, and without waiver of any other rights and remedies that it may have, to extend the time for completion of performance. The new date for completion of performance shall be final, of the essence of this Contract, and subject to further change only in accordance with this Contract.

43. Warranty

- (a) Seller expressly warrants for a period of ninety (90) days from acceptance by Buyer that all Contract Work shall conform to this Contract and be performed in a proper and workmanlike manner, and that all Contract Products shall conform to this Contract and be free from defects in design, material, workmanship and fabrication. If any nonconformities or defects are discovered in the Contract Work or the Contract products, which are not caused by

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Buyer, Seller shall repair, replace or re-perform any nonconforming or defective Contract Work or Contract products at Seller's sole expense within ten (10) days of Buyer's written notice. If Seller has not repaired, replaced or re-performed such nonconforming or defective Contract Work or Contract Products within the ten (10)-day period, Buyer may repair, replace or re-perform such nonconforming or defective Contract Work or Contract Products at Seller's expense.

- (b) Seller hereby assigns to Buyer all warranties provided by the manufacturers of all Contract Products and their components.
- (c) Seller expressly warrants that the rental property shall be in first class condition, in good working order, in conformance with this Contract, and equipped with all required safety devices as to operate properly and render safe, efficient, economical and continuous service. If the rental property fails to operate properly or fails to render safe, efficient, economical and continuous service at any time during the term of this Contract, Buyer shall so notify Seller, and immediately upon such notification Seller shall, at Seller's sole expense, either: (a) retrieve the rental property and replace it with properly operating and satisfactory equivalent rental property; or (b) make or pay for such repairs or maintenance as may be necessary to restore the rental property to properly operating and satisfactory condition. Buyer shall not be responsible for payment of the Contract Price for any period during which the rental property is out of service owing to its failure to operate properly or fails to render safe, efficient, economical and continuous service, unless such failure is directly caused by Buyer's negligence or intentional misconduct in the use or operation of the rental property.
- (d) Seller expressly warrants that it has good title to the rental property and the right to enter into this Contract. Buyer shall not be required under any circumstances to surrender the rental property or pay any portion of the Contract Price to any person or entity other than Seller pursuant to any lien, levy, attachment, writ or execution, court order, judicial sale, or any other legal process.

44. Personal Information Privacy Protection

- (a) **Definitions.** As used in this paragraph, the following capitalized terms shall have the meanings provided in this section.
- (b) **Personal Information.** "Personal Information" consists of any information that relates to an identified or identifiable NASSCO- Mayport employee, and which is collected or received by Seller, its employees, or its agents, in connection with or incidental to the contracted services that Seller performs for Buyer.
- (c) **Sensitive Personal Information and "SPI".** "Sensitive Personal Information" or "SPI" is a form of Personal Information that consists of one or more of the following elements of information about an individual:
 - i. social security number, social insurance number, military identification number, or tribal identification card number;
 - ii. passport, visa, alien registration, or other identification number assigned for immigration purposes;
 - iii. driver's license number, national identification card number, state or provincial identification card number, or other government-issued identification number; or
 - iv. account number, card number, routing number, pass-code, or personal identification number ("PIN") for a checking or savings account, investment account, personal or Buyer-sponsored credit or debit card, or any other financial account.

SPI also consists of information that is capable of being associated with a particular individual through a combination of an individual's name with one or more of the following identifiers:

 - i. access code or password for an information system;
 - ii. mother's maiden name or date of birth;
 - iii. digital or electronic signature;
 - iv. biometric data, including fingerprint, retina, or iris image, or DNA profile; or
 - v. health insurance number or medical information (any information regarding an individual's medical history, mental, or physical condition, or medical treatment or diagnosis by a health care professional).
- (d) **Control of Personal Information.** Buyer has the exclusive authority to determine the purposes and means of processing of all Personal Information by Seller pursuant to the agreements between the Parties.
- (e) **Use of Personal Information.** Seller shall use Personal Information solely for the purpose of supporting its performance of the contracted services for Buyer and not for any other purpose.
- (f) **Access to Personal Information.** Seller shall restrict access to Personal Information to its employees who require access to this information to support Seller's performance of the contracted services for Buyer. Seller may also permit employees or representatives of Seller's subcontractors and consultants to have access to Personal Information, but only (a) to the extent necessary for them to support Seller's performance of contracted services for Buyer, and (b)

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with the written authorization of Buyer in accordance with Section (e) below.

- (g) **Transfer of Personal Information.** Seller shall not permit Personal Information to be transferred to any third party that is not one of the **Approved Third Parties** listed on **Attachment A** hereto, unless transfer is:
- i. required by subpoena or order of a court or tribunal of competent jurisdiction, or by a government agency entitled to obtain the information in the course of a lawful investigation (subject to a protective order or confidentiality agreement where reasonably possible);
 - ii. necessary in connection with litigation between Seller and either Buyer or the individual to whom the information relates (subject to a protective order or confidentiality agreement where reasonably possible);
 - iii. authorized by the individual to whom the Personal Information at issue relates; or
 - iv. authorized by Buyer or the subject individual in writing.
- (h) From time to time, third parties can be added to the Approved Third Parties list or eliminated from that list by the mutual agreement of Buyer and Seller by re-issuing **Attachment A** in updated form bearing the revision effective date. Buyer can remove a Third Party from the list by providing written notice to Seller (i) if the Third Party fails to sign or renew a personal information security agreement in a form suitable to Buyer or (ii) if Buyer determines that the Third Party does not use sufficient data security procedures.
- (i) **Information Security.** Seller shall maintain an information security program that satisfies applicable Privacy Laws and is consistent with general standards in Seller's industry. In addition, such program shall include appropriate administrative, technical, physical, organizational, and operational safeguards and other security measures to maintain the security and confidentiality of Personal Information and to protect it from known or reasonably anticipated threats or hazards to its security and integrity. The level of security and protection provided shall be commensurate with the nature of the Personal Information to be protected.
- (j) **Storage of SPI.** Storage of SPI must be handled in a manner consistent with the access principles in Section (d) above. Records containing SPI in paper format or microfiche must be stored and secured appropriately in areas to which access is restricted to appropriate personnel. Records containing SPI in electronic format must be stored in a secure computer network satisfying the requirements of Section (f), the adequacy of which Seller will monitor to protect SPI against emerging security threats, and which Seller will enhance as necessary to address such threats. SPI cannot be stored electronically outside of this network environment (or Buyer's own secure computer network) unless the storage device (e.g., laptop, memory stick, computer disk, etc.) is protected by appropriate encryption technology that is not less than 128 bits in length.
- (k) **Transmission of SPI.** An electronic record that contains SPI cannot be transmitted electronically outside a secure network environment satisfying the requirements of Section (f) other than by a secure network connection or by communications protected by appropriate encryption technology that is not less than 128 bits in length. Likewise, Seller shall not require any individual to transmit SPI over the internet unless the connection is secure or the SPI is protected by encryption technology meeting this standard. Seller shall not print SPI on any mailed material unless required by law and will not make SPI visible through any envelope window unless required by law. Notwithstanding the provisions of this Section (h), when strictly necessary to perform the contracted services and permitted by applicable Privacy Laws, social security numbers and similar government-issued identification numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the Social Security or other identification number. SPI may be transmitted to and from Seller by facsimile, provided that Seller has taken reasonable precautions to avoid erroneous transmission or receipt.
- (l) **Subpoenas and Legal Proceedings.** Subject to applicable law, Seller shall notify Buyer immediately in writing of any subpoena or other judicial or administrative order by a court, tribunal, litigant, or government authority seeking access to or disclosure of Personal Information covered by this Rider. Subject to applicable law, Buyer shall have the right to defend subpoena enforcement proceedings or motions to compel in lieu of and on behalf of Seller, which shall provide reasonable cooperation to Buyer in connection with such defense.
- (m) **Compliance with Privacy Laws.** To the extent they are applicable, Seller shall comply with all applicable federal, state, provincial, country, and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, or security of Personal Information including, without limitation, security breach notification laws imposing minimum data security requirements, laws requiring the secure disposal of records containing certain Personal Information; laws governing the use and transmission of social security numbers; the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN- SPAM); the FTC Disposal of Consumer Report Information and Records Rule, 16 C.F.R. § 682; the EU Directives governing general data protection (Directive 1995/46/EC), electronic commerce (Directive 2002/58/EC), and data retention (Directive 2006/24/EC); and the Canadian Personal Information Protection and Electronics Documents Act ("PIPEDA") (collectively, "Privacy Laws"). Seller must supply certifications of compliance with these applicable data security laws and regulations.
- (n) **Information Security Incidents.** Seller shall immediately notify Buyer of any actual or suspected theft, loss,

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unauthorized use, disclosure or acquisition of, or access to, any SPI (hereinafter "Information Security Incident") of which Seller becomes aware. Such notice shall summarize in reasonable detail the effect of the Information Security Incident on the SPI and the corrective action taken or to be taken by Seller. Seller shall promptly take all appropriate corrective actions and shall cooperate with Buyer in all reasonable and lawful efforts to mitigate or rectify such Information Security Incident.

- (o) **Inspection and Audit.** Buyer shall have the right to monitor Seller's compliance with the terms of this provision by inspecting Seller's facilities, equipment, and records, provided that any inspection will not unreasonably interfere with the normal conduct of Seller's business. Buyer's rights shall include the right to conduct periodic audits of the procedures and safeguards used by Seller to protect Personal Information, provided that Seller and Buyer may agree to an alternative documentation process in lieu of an audit. Seller shall cooperate with such requests by Buyer.
- (p) **Destruction and Return of Personal Information.** Upon the completion of Seller's services for Buyer (or such earlier time as Buyer requests), Seller shall return to Buyer, or at Buyer's request, securely destroy or render unreadable each and every original and copy in every media of all Personal Information in Seller's possession, custody or control. In addition, Seller shall provide to Buyer a written certification by an Officer of Seller confirming that such return or destruction occurred. If Seller cannot destroy all Personal Information as required herein due to recordkeeping law or the pendency of litigation requiring it to retain the Personal Information in its existing format, Seller warrants that it shall ensure the confidentiality of the Personal Information, that it shall not use or disclose Personal Information after termination of its services for Buyer, and that it will comply with its destruction obligations once the legal prohibition on destruction has expired.

PART B: PERFORMANCE AT BUYER'S FACILITIES

In the event that Seller, its employees, agents and subcontractors (including delivery persons and rental equipment), enters any facility owned, leased or operated by Buyer in the Jacksonville, FL area. Seller shall comply with the following additional terms and conditions that relate to these facilities. Performance at Buyer's facilities includes, but is not limited to, delivery of the Contract Products, rework and guarantee work, rental property to Lessee's facilities, retrieval of rental property from Lessee's facilities, and the performance of repair and maintenance of the rental property at Lessee's facilities.

1. Clean-Up of Work Site

During the performance of this Contract, and upon completion of the Contract Work or earlier termination of this Contract, Seller shall remove all of Seller's tools and equipment from Buyer's facilities. Seller shall also dispose of any debris, garbage or other waste material, including excess materials, scrap and equipment used or generated in performance of this Contract, in the appropriate receptacles at Buyer's facilities, or as otherwise specified in the Contract. Seller shall be liable for and shall pay to Buyer, upon demand, all costs of disposal or removal of tools, materials or equipment not so removed.

2. Environmental

- (a) Environmental, Health and Safety (EHS) if Seller Operates within the Facilities Seller must communicate the Buyer's EHS policy and all applicable environmental requirements to workers who will perform work on behalf of the Buyer before they perform such work or arrive at any of Buyer's facilities. This must be documented by the seller and be available upon request from the Buyer. This documentation is achieved by the EHS Department prior to arrival and work start by means of NIMS WI-PM-001-0-FL Sub-Contractor Checklist.
- (b) Environmental, if Seller Operates Within the Facilities
 - i. Seller shall comply with Buyer's written environmental policies, procedures and requirements, and with all United States Federal, state and local environmental laws and regulations, including without limitation, those regarding the handling, management and use of any hazardous substances, and shall be responsible for all hazardous waste (both as defined by United States and Virginia law generated by Seller's employees and subcontractors during the performance of this Contract. The environmental policies and procedures are located at <http://www.nassconorfolk.com/ComplianceDocuments.html> under the heading "About Us". Seller shall notify Buyer of all activities and services Seller is anticipated to conduct (based on Contract Work at the Facilities) that may impact the environment by completing the Environmental Requirements Certification Form (located on the website). Seller must obtain pre-approval for all chemicals or Hazardous Materials that the Seller anticipates using in performing Contract Work at the Facilities. This requirement is specified in NIMS WI-PM-001-0-FL Sub-contracto Checklist as directed by NAVSEA Standard Item 009-03 (Initial Determination) and includes submitting the Hazardous Substance Control Form (also found on the website) weekly inclusive of all Safety Data Sheet (SDS) for the materials. Seller shall inform Buyer of current Virginia Department of Environmental Protection (FDEP) EPA ID number (if applicable). Seller will additionally comply with Local Standard Item 009-60SE, General Environmental Compliance for NS Mayport. Seller shall inform Buyer of all hazardous waste generated at the Facilities and shall cooperate with Buyer in disposing of such waste as directed by Buyer. Seller shall bring to the immediate notice of Buyer any risk to the environment which Seller believes has not been adequately assessed and is not under adequate control, so that Buyer can take appropriate action to prevent potential environmental harm or other losses. Any failure to perform these obligations shall be an immediate default under this Contract not subject to any cure period. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend, indemnify and hold Buyer harmless as set forth in the Indemnity Section.

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- ii. Seller's environmental management system or program shall incorporate measures which reasonably demonstrate that its employees are competent to perform their tasks, with due regard for the need to protect the environment and ensure that hazards to the environment have been eliminated, where possible, or are being controlled through formal planning methods and procedures.
- iii. If Seller causes, to any extent, the actual or potential Environmental Incident, and Buyer's On-Scene Emergency Coordinator responds to such an Environmental Incident, Buyer will incur costs and expenses to respond to each such Environmental Incident. The Seller agrees to pay the Buyer for their response to each such Environmental Incident. This includes the Buyer's costs, expenses, and any fines or penalties of remediation resulting from the Environmental Incident, and shall not impair or waive Buyer's indemnification rights as set forth in the Indemnity Section. Buyer shall have the right to offset or reduce any payments to Seller for these expenses.

3. Safety and Health

- (a) The safe conduct and health of all persons employed by Seller or its subcontractors and suppliers shall be the sole responsibility of Seller. Seller shall take all reasonable precautions to protect the health and safety of such employees and others and to minimize danger from all hazards to life and property. Seller shall comply with all applicable United States Federal, state, and local laws and regulations, including without limitation health, safety and fire protection laws and regulations in force at Contract award and as modified during the life of the Contract. Seller shall also comply with Buyer's health and safety policies and procedures available at Buyer's EHS Department. Seller is solely responsible for informing itself of said laws (Federal, State, and Local), regulations, policies and procedures, and training its employees. Said training shall be documented by the Seller and made available upon request from the Buyer.
- (b) Unless otherwise addressed in the Contract, the Buyer has the right to reasonably require the Seller to reassign and/or remove any of Seller's or Seller's subcontractors' or suppliers' employees immediately upon Buyer's request should this person's conduct increase Buyer's health and safety concerns. (This includes any on-going operations at the Facilities and in conjunction with Buyer's rights herein).
- (c) Seller's Health and Safety Plan, Fire Safety Plan and OSHA 10-Maritime certification cards shall be submitted reviewed and approved by the Buyer's EHS Department prior to Seller's arrival. Upon arrival, a Job Hazard Analysis (JHA) shall be conducted jointly by Buyer's and Seller's representatives to identify general and unique potential hazards requiring mitigation throughout all spaces and locations contained within the work item. Any failure by Seller or any of its subcontractors or suppliers to comply with any such health and safety policies, procedures, laws or regulations shall constitute a default. Under no circumstances shall compliance with Buyer's safety policies and procedures, alone, be considered complete satisfaction of the requirements of this Section.
- (d) Seller's occupational health and safety management system shall incorporate measures which demonstrate that its employees are competent to perform their tasks safely and ensure that hazards to health and safety have been eliminated, where possible, or are being controlled through formal planning methods and procedures. Further, NASSCO-Mayport meetings concerning any aspect of subcontractor health and safety must be attended by at least one of Seller's managerial/health and safety staff members for the purpose of ensuring that proper transmission and direction of new safety rules, or current rules, are being communicated, understood, and followed by all of Seller's employees when they are in the Facilities.
- (e) Seller shall complete the following prior to commencement of the Contract Work: (i) Provide to Buyer's EHS Department the name, telephone number and title or position of the Seller's Health and Safety Representative, (ii) Seller's designated managerial/safety leadership who will direct safety compliance in the Facilities to receive NASSCO's subcontractor safety training and complete acknowledgement documentation of Seller's responsibilities with regard to safety, health, and fire protection, and (vi) Seller is required provide proof of compliance with the requirements of 29 CFR 1910.1200.
- (f) Seller represents and warrants that all equipment used by Seller to perform any Contract Work at the Facilities conforms to all federal, state, and local safety, health, and fire protection standards.
- (g) Seller represents and warrants that Seller's employees, subcontractors' and suppliers' employees performing Contract Work at the Facilities are properly trained in all Federal, State, and local health, safety and fire protection laws and regulations and Buyer's health and safety policies and procedures, applicable to the Contract Work.
- (h) Seller shall report all recordable occupational injuries or illnesses occurring at the Facilities during performance of the Contract Work in accordance with the following procedures: (i) Seller shall secure the incident scene, make an initial report to the vessel Quarterdeck and the Buyer's EHS Department as soon as it is known to Seller. This report shall consist of the name of the injured person, place of occurrence, nature of the injury, and a description of the incident. This report can be made orally by telephone call to (904) 249-7772 ext. 2045 or by personal visit to Buyer's EHS Department, and (ii) Seller shall submit a written report in the form of a formal accident investigation report, within twenty-four (24) hours of the incident, using NASSCO-Mayport Form for First Report of Injury (FROI) available at Buyer's EHS Department or any other form which includes all necessary information. This report shall be delivered to Buyer's EHS Department.
- (i) Seller shall immediately notify Buyer's EHS Department, in writing, upon receiving notice of any inspection from either United States OSHA or Virginia OSHA representatives, of their work area at the Facilities. In the event of such an

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inspection, Seller shall permit Buyer's personnel to be present at any opening conference, the inspection, and any closing conference, and Seller shall provide Buyer with copies of all correspondence, including citations, received from OSHA or Virginia OSHA.

- (j) If, in Buyer's sole opinion, Seller fails to comply with this Safety Section, Buyer may without prejudice to any other legal or contractual rights of Buyer, issue an order stopping all or part of the Contract Work. Seller shall have no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (k) To the extent required of Buyer's own employees, personal protective equipment to include but not limited to hard hats, steel-toed safety shoes with well-defined heel and ankle protection, ANSI Z87 protective eyewear, and hearing protection are required, at Seller's expense, for any and all of Seller's employees, or Seller's subcontractors' or suppliers' employees, who will be conducting Contract Work in production areas of the Facilities.

4. Security

Seller shall comply with Buyer's security policies and procedures regarding personnel administration, vehicle operations, and general security practices. Willful or repeated negligent noncompliance by Seller or any of its subcontractors with any such security policies or procedures shall constitute a material breach of this Contract.

5. Seller's Personnel and Management

- (a) Unless otherwise addressed in the Contract, during on-going operations at Buyer's facilities, Seller shall reassign or remove from Buyer's facilities any of Seller's employees or subcontractors, as determined by Buyer at Buyer's sole discretion.
- (b) Unless otherwise addressed in the Contract, Seller shall reassign and remove key project personnel who are employees of Seller or Seller's subcontractors within a reasonable period of time, at Buyer's request, as determined by Buyer at Buyer's sole discretion.

6. Treatment at Buyer's Medical Facilities

Buyer shall have no obligation to furnish medical treatment to Seller's or Seller's subcontractor's employees while such employees may be working in Buyer's facilities. In the event Buyer's EHS Department furnishes medical treatment to any such employee or to Seller's subcontractor's employees, Seller shall defend, indemnify and hold harmless Buyer as set forth in the Indemnity Section.

7. Use of Buyer's Equipment

Seller shall not use, or permit any third party to use, any of Buyer's equipment, tools, devices, apparatus or property ("Buyer's Equipment") without Buyer's express, written consent. If Buyer so consents, Seller shall ensure that only qualified properly trained persons use Buyer's Equipment and those persons obey all of Buyer's applicable use procedures and requirements and all applicable federal, state and local laws and regulations. If Buyer so consents, Buyer's Equipment is provided "as-is," with no warranty, express or implied, as to its merchantability, fitness for any particular purpose, current condition, or prior maintenance history. Seller is responsible for all risk of loss of or damage to Buyer's Equipment used by Seller.

8. Background Check, Credit History Check and Drug Screen

- (a) This section applies to any individual who is required to enter Buyer's facilities on a regular basis (30 or more days in any 365-day period) who is not a legal employee of Buyer. This includes consultants, temporary employees, and individuals employed by any of Buyer's contractors, subcontractors, labor suppliers, personnel agencies, vendors, etc.
- (b) These individuals must meet the minimum screening requirements below before they are allowed to have unescorted access to Buyer's facilities or access to Buyer's computer networks, **UNLESS** they meet at least one of the following criteria:
 - i. production workers including those individuals that supervise production workers in New Construction and/or Repair provided they will not require access to any of Buyer's computer networks;
 - ii. individuals holding a TWIC (Transportation Worker Identification Credential) card; or
 - iii. individuals holding a DoD clearance at or above the SECRET level.
- (c) Minimum screening requirements are:
 - iv. **Background Check:** Seller shall have verified through background checks that all individuals provided hereunder have the education, skills, qualifications and experience represented to Buyer, including but not limited to the following:
 - I-9 information (such as Social Security number or Registration number).
 - Name (including all aliases, nicknames and former names) and all addresses for past seven (7) years.
 - Employment history - Employers and dates of employment (seven (7) years).

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- Job titles (7 years)
 - Reason for termination of prior employment (if disclosed) (seven (7) years).
 - Education/Training - all pertinent degrees, professional licenses, certifications, etc.
 - Criminal history - prior criminal convictions and guilty pleas (federal and state) (seven (7) years), excluding juvenile offenses and offenses sealed or expunged by law.
 - Citizenship status
 - Past revocation, denial or suspension of U.S. Government security clearance.
 - References (if any).
- (d) In performing the background checks, Seller agrees to comply with all applicable local, state and federal laws, including the Fair Credit Reporting Act if applicable, where Seller has obtained the individual's consent and authorization to obtain such information and to follow all procedures required thereunder. Seller agrees to retain all documents relating to such background checks for individuals who are or were assigned to perform services while this Contract is in effect, for at least two (2) years from the date of assignment at Buyer. Upon request by Buyer and within limits legally available to Buyer, Seller agrees to provide to Buyer within one (1) business day a copy of such documents for any individual assigned to perform services pursuant to this Contract.
- (e) **Credit History Check:** For all Seller's individuals whose work at Buyer's facility will have any relationship to (a) administration of Buyer's computer networks; (b) access to non-public data regarding Buyer financial performance; or (c) performance of functions determined by Buyer to require a consumer credit history in order to protect Buyer and its assets, a disclosure and consent authorization consistent with the Fair Credit Report Act ("FCRA") and separate from the background check consent noted in the paragraph above, must be obtained by Seller, subject to verification by Buyer that the FCRA consent in use by Seller permits Buyer to receive and use the credit history check in connection with each Seller's individuals' access to Buyer facilities.
- (f) **Drug Screen:** Buyer is a drug-free yard consistent with the Drug-Free Workplace Act of 1988. Every Seller individual working at Buyer's facility must be drug tested and must be drug free prior to Seller's individual's first day at Buyer's facility, and must be and remain drug free. Buyer maintains the right to audit these findings at any time. In performing the drug tests, Seller agrees to comply with all applicable local, state and federal laws. Seller agrees to retain all documents relating to such drug tests for individuals who are or were assigned to perform services while this Contract is in effect, for at least two (2) years from the date of last assignment at Buyer. Upon request by Buyer, Seller agrees to provide Buyer within one (1) business day with a copy of such documents for any Seller employee assigned to perform services pursuant to this Contract. Seller shall require each of Seller's or Seller's individuals assigned to work at Buyer's facilities to be re-drug tested if his/her service at Buyer's facilities is interrupted for a period of ninety (90) days or longer.

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