

**General Dynamics NASSCO-Mayport  
MILITARY SHIP REPAIR PROGRAMS  
GENERAL TERMS AND CONDITIONS  
November 1, 2016**

Military Ship Repair Programs Purchase Order

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**I. Definitions**

The following terms shall have the meanings set forth below throughout this Contract:

- (a) **"ABS"** means the American Bureau of Shipping.
- (b) **"Buyer"** means General Dynamics NASSCO-Mayport or "NASSCO-Mayport".
- (c) **"Contract"** means the Purchase Order between Buyer and Seller, including these Military Ship Repair Programs General Terms and Conditions, any applicable Special Terms and Conditions, the Specifications, and any other documents incorporated by reference. From time to time, the Purchase Order may be replaced by an agreement for either particular services or goods. If this circumstance is present, then the "Contract" shall consist of the Purchase Order, the agreement (whether in the form of a formal contract), all of these General Terms and Conditions, the Special Terms and Conditions, the Specifications, and any other documents incorporated by reference by NASSCO-Mayport.
- (d) **"Contract Price"** means the total amount to be paid by Buyer to Seller in consideration of Seller's full performance of this Contract, as set forth on the face of the Purchase Order.
- (e) **"Contract Problem"** means a fact or circumstance of which the Seller is aware that does, will or reasonably is anticipated to (i) have a significant or substantial impact on the delivery schedule or completion of the Contract or the cost of the Contract (increase or decrease) or (ii) requires modification to the Contract or Specification(s). The terms "significant" and "substantial" shall be interpreted in the same manner as they would be interpreted by a reasonably prudent business person under the relevant circumstances.
- (f) **"Contract Products"** means the products, material, apparatus, equipment, supplies, articles, data or other goods to be furnished by Seller under this Contract.
- (g) **"Contract Work"** means the services and/or goods which are the subject of this Contract. Unless otherwise specifically defined, "Contract Work" includes any Contract Products called for by this Contract.
- (h) **"Contracting Officer"** means person authorized to negotiate, approve, enter into, deliver contracts, and change orders thereto, for the acquisition of material, personal and intellectual property and/or services for the Government.
- (i) **"Delivery"** means preliminary acceptance of the Vessel by the Government or the Owner whereby the Government or the Owner assumes responsibility for the Vessel and the Guaranty Period commences.
- (j) **"Dispute"** means a disagreement as to the validity of a payment or performance position taken by one party to this Contract with respect to the other.
- (k) **"Environmental Incident"** Means a spill or release of material to the air, water, or land. A spill of petroleum products, chemicals, grit, or other unauthorized substance to the NS Mayport Basin, adjacent piers, storm drains, VCHT risers or within the operational limits of NS Mayport shall immediately be reported to the SUPERVISOR (SERMC).
- (l) **"Facilities"** means NASSCO-Mayport locations and other facilities used by Buyer or its affiliates located in the Jacksonville, Florida area or anywhere else designated by Buyer, including but not limited to, Government military bases, and customer shipyards.
- (m) **"FAR"** means Federal Acquisition Regulation as contained in Title 48, Code of Federal Regulations, and unless otherwise indicated shall be deemed to include the Department of Defense FAR Supplement ("DFARS") as similarly contained in Title 48, Code of Federal Regulations. In the event of a conflict between the FAR and the DFARS provisions included in the Contract, the DFARS provisions shall prevail.
- (n) **"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 the Government. Failures or delays caused by a Force Majeure circumstance are neither compensable nor a breach, under the terms of this Contract.
- (o) **"Furnished Property"** means property owned, leased, rented, or held in bailment by Buyer, the Government or the Owner and that has been provided to Seller for Seller's benefit. Furnished Property may include equipment, tools, devices, apparatus or property belonging to Buyer.
- (p) **"Government"** means the United States of America, acting through its authorized representative, the Department of the Navy.
- (q) **"Guaranty Period"** shall mean the period for which Seller guarantees to Buyer, the Government or Owner, and their successors and assigns, that the Contract Work will conform to this Contract and will be free from defects in material, workmanship and design and will conform to the Specifications for a period defined in the Prime Contract after Delivery of the Vessel to the Government or Owner, plus any additional time as required by the Prime Contract and as defined in the Military Shipbuilding Programs, Contract, Special Terms and Conditions for the applicable military program in the "Guaranty Period" Section.
- (r) **"Hull Structure"** means the shell, or outer casing, and internal structure below the main deck which provide both the floatation envelope and structural integrity of the Vessel in its normal operations.

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- (s) **“Lien”** means any lien, stop notice, bond right, security interest, encumbrance or other right *in personam* or *in rem* against the Vessel the Contract Products or Contract Work enforceable in a court of competent jurisdiction, including but not limited to mechanic’s liens.
- (t) **“Manufacturing Materials”** means completed Contract Products, partially completed Contract Products, and materials, parts, tools, dies, fixtures, plans, drawings, information and contract rights that Seller has specifically produced or acquired for this Contract.
- (u) **“NASSCO-Mayport”** means General Dynamics NASSCO-Mayport.
- (v) **“OCM”** means Original Component Manufacturer.
- (w) **“OEM”** means Original Equipment Manufacturer.
- (x) **“Owner”** means the party (which may be the Government or a commercial entity) for which the Vessel(s) is being constructed or repaired.
- (y) **“Prime Contract”** means the contract between Buyer and the Government or the Owner for the construction of the Vessel(s).
- (z) **“Procurement Representative”** means person authorized to negotiate, approve, enter into and deliver Purchase Orders, subcontracts and other engagements, and change orders thereto, for the acquisition of material, personal and intellectual property and/or services for NASSCO-Mayport.
- (aa) **“Purchase Order”** means any agreement from Buyer for Contract Products or Contract Work that references these and any other applicable Terms and Conditions.
- (bb) **“REA”** means Request for Equitable Adjustment.
- (cc) **“Regulatory Body”** means any external independent organization (including but not limited to ABS, FCC, FDA, EPA, USCG, Department of Homeland Security, Department of State), sometimes but not necessarily established by the Government, that regulates products or the activities of companies in an industry.
- (dd) **“Risk of Loss”** means the term used to determine which party should bear the risk of damage or destruction occurring to the Contract Products or Contract Work after the sale has been made, but before delivery has occurred.
- (ee) **“Safety Representative”** means the person who has the responsibility and authority to correct any safety violations by Seller during the performance of the Contract Work.
- (ff) **“Seller”** means the individual, association, partnership, corporation or other entity identified in the Contract who is to perform the Contract Work or supply the Contract Products, as well as all of their directors, officers, and employees.
- (gg) **“Specifications”** means all specifications, plans, data, drawings, diagrams, work schedules, and any other documents, which describe the Contract Work and/or the Contract Products.
- (hh) **“Vessel(s)”** means any one or more of the ships to be constructed or repaired under the terms of the Prime Contract.

**PLEASE NOTE THAT ALL SECTIONS PRESENTED HEREAFTER APPEAR IN ALPHABETICAL ORDER.**

**2. Acceptance, Integration, Amendment and Interpretation**

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 all of such 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.

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.

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 the parties and shall be interpreted without regard to which party is deemed to have drafted this Contract.

This Contract may be amended or modified only by a written instrument executed by each party’s authorized representatives.

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.

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.

This is a DO-A-3 Rated Order Certified for National Defense use and the Seller must follow the provisions of the Defense Priorities and Allocations System (DPAS) Regulations (15CFR700). This priority rating must be invoked on Seller’s order resulting from this Contract.

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**3. Assignment**

Seller may not assign this Contract, in whole or in part, voluntarily or by operation of law, without Buyer's prior written consent. Buyer may, without Seller's consent, assign this Contract in whole or in part to any third party, including without limitation, the Owner, or the Government or to any other contractor acting under the terms of the Prime Contract.

**4. Buyer's Medical Treatment, if Seller operates within the Facilities**

Buyer shall have no obligation to furnish medical treatment to Seller's employees working in the Facilities. In the event Buyer's Safety Department does furnish medical treatment to Seller's employees, subcontractors or suppliers, Seller shall defend, indemnify and hold Buyer harmless as set forth in the Indemnity Section.

**5. Changes and Requests for Equitable Adjustment Submissions**

This Section covers all forms of changes to the Contract. This includes all agreed upon change orders as well as REAs. Nothing in this Section shall excuse Seller from proceeding with diligent performance of this Contract as changed.

- i. Contract Changes. Subject to the **Acceptance, Integration, Amendment and Interpretation Section** only an authorized Procurement Representative or Buyer may, by unilateral written order, make changes to the Contract Work. 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, provided that, Seller timely and promptly submits pertinent information and Seller obtains prior written authorization from Buyer.
  - a) Buyer's, the Government's or the Owner'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 Section and shall not be the basis for any REA.
  - b) Promptly, but in any event no later than three (3) business days from the date of receipt of any request to change the terms, including schedule or price, of the Contract, 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. Failure of Seller to submit adequate documentation may result in denial of Seller's request.
  - c) If the parties reach agreement as to such request, then Buyer will issue a change order in the form of an additional or amended Purchase Order, adding or deleting elements of either the price or the time to complete the Contract Work.
  - d) If the parties do not reach agreement after submission of Buyer's written estimate, or an accord and satisfaction, then Seller shall submit a written request for equitable adjustment.
- ii. Requests for Equitable Adjustments (REA). All REAs submitted by Seller to Buyer should include, but are not limited to, the following information: a written rationale fully stating why Seller is entitled to a price and/or time adjustment, adequate supporting documentation (e.g., specific and clear time records for laborers as to what they were doing, when, for what duration, and at what price, any underlying contracts for additional or different materials, delivery charges, etc.) and any other documents reasonably requested by Buyer.
  - a) Seller must assert, in writing, its right to an equitable adjustment under this clause within thirty (30) days from completion of Seller's applicable work.
  - b) **HOWEVER, IN ALL EVENTS, SELLER'S REA SHALL EITHER BE RESOLVED BY THE PARTIES WITHIN SIX (6) MONTHS FROM THE DATE OF ITS SUBMISSION TO NASSCO-MAYPORT, OR IT SHALL BE THE SUBJECT OF ARBITRATION AS SET FORTH IN THE DISPUTES SECTION. IF THE PARTIES HAVE NOT RESOLVED THE REA, NOR FILED A DEMAND TO ARBITRATE THE REA WITHIN SIX (6) MONTHS FROM SELLER'S SUBMISSION OF THE REA TO NASSCO-MAYPORT, THE REA IS TIME BARRED, AND FOREVER RELEASED OR WAIVED. THIS IS A CONTRACTUAL STATUTE OF LIMITATIONS FOR THE PARTIES.**
  - c) **SELLER AGREES IT SHALL NOT FILE AN REA AFTER NASSCO-MAYPORT HAS ISSUED A LETTER INDICATING THAT THE CONTRACT BETWEEN SELLER AND NASSCO-MAYPORT IS CLOSED, FINISHED, COMPLETED, TERMINATED AND/OR HAS EXPIRED.**

Nothing in this Section shall excuse Seller from proceeding with diligent performance of this Contract as changed. Further, nothing in this Section is intended to conflict for the Lien release laws applicable to this Contract, or the Contract Work.

Failure by Buyer and Seller to agree to any REA under this Section shall be resolved in accordance with Section 15, "Disputes" of these Terms and Conditions. Seller shall certify any REA for Contract Work in support of a Government Prime Contract was made in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 *et seq.* Further, Seller shall indemnify and hold harmless Buyer for any claim or legal action resulting from Buyer's submittal of Seller's REA to the Government.

**6. Clean-up of Work Site, if Seller operates within the Facilities**

During the performance of this Contract, Seller shall ensure their designated work area is free of debris, garbage or other waste material at the end of every shift. Upon completion of the Contract Work or earlier termination of the Contract Work, Seller shall remove all of Seller's tools and equipment from the Facilities. Seller shall also dispose of all debris, garbage, or other waste material, including excess materials, scrap and equipment used or generated by Seller, its subcontractors or suppliers in performance of this Contract, in the appropriate receptacles at the Facilities, or as otherwise specified in the Contract. Seller shall be liable for and shall pay to Buyer, upon demand, all costs of removal or disposal of Seller's tools and equipment, debris, garbage, waste materials, excess materials, scrap and equipment used or generated in performance of this Contract not so removed.

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**7. 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.
- (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."

**8. Compliance with Ethics**

Seller shall comply with the General Dynamics *Standards of Business Ethics and Conduct*, which can be found at <http://www.nassconorfolk.com/docs/Blue-Book.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.

**9. 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, 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 and with all rules, regulations and requirements of the classification society selected by Buyer and the Government or the Owner to review and approve the Specifications and construction. **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.

**10. Computation of Time**

Unless the context requires otherwise, time shall be computed by including Saturdays, Sundays and U.S. holidays, except that if such period terminates on a Saturday, Sunday or U.S. holiday, it shall be deemed extended to the next U.S. business day.

**11. Confidentiality and Third Party Intellectual Property Rights**

Information furnished by Buyer and identified by Buyer as "NASSCO-Mayport Proprietary/Trade Secret Information" or otherwise identified as proprietary or subject to restricted access or dissemination shall, as between Seller and Buyer, be and remain Buyer's intellectual property, and shall not be duplicated, used or disclosed except for the purpose and to the extent necessary for the performance of this Contract. Upon completion of this Contract, such information shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Seller shall use its best efforts to maintain the confidentiality of this information. Seller may disclose such information to only those third parties who have a need to know such information for performance of this Contract, and provided such third parties are informed of the confidential nature of the same and have agreed in writing to protect such information consistent with Seller's obligations hereunder. These obligations are not imposed upon Seller if: such information is already known to Seller, is lawfully obtained by Seller from another source, or becomes a part of the public domain otherwise than as a result of breach of this Section.

Seller further represents that it has read and understood the Specifications, and that based on its past experience and superior knowledge, Seller warrants to Buyer and its successors in interest that the manufacture, sale or use of the Contract Products or Contract Work, whether manufactured in accordance with the Specification or otherwise, does not and will not infringe or interfere with any intellectual property

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rights(s) of any third party, including, without limitation, patent, trademark, copyright, trade secret, industrial design or other proprietary rights. Seller shall defend, indemnify and hold Buyer harmless for any alleged claim of infringement of any third party intellectual property right as set forth in the Indemnity Section.

In addition:

- (a) Seller shall use only those portions of the Specifications as are required to perform the Contract Work. Seller shall not disclose the Specifications, in whole or in part, except as expressly allowed in writing by Buyer and only for performing Contract Work. The Specifications shall be disclosed to Seller only as reasonably required for such purposes as are necessary in order to carry out the terms of the Contract Work that Buyer has agreed to perform for the Owner. Seller shall not disclose any portions of the Specifications in such a complete form as would enable third parties to construct, or have constructed, a vessel of the same design as the Vessels without: (i) expressly prohibiting the further disclosure thereof, and (ii) expressly prohibiting the use thereof for the purpose of constructing, or having constructed, a vessel of the same design as the Vessels. For purposes of this paragraph, "third parties" shall not include the ABS, US Coast Guard, and any other U.S. Regulatory Body or agency. At NASSCO-Mayport's sole discretion, it may require Seller to execute a Non-Disclosure Agreement with additional and/or more stringent requirements.
- (b) Any design or engineering data, in whatever form, relating to the Vessels that is produced by Seller under this Contract shall be the sole intellectual property of Buyer, unless otherwise agreed. In this regard, Seller agrees to assign, and does hereby assign, all right title and interest in and to all such design or engineering data produced under this Contract, including without limitation all intellectual property right in such design or engineering data. Seller grants to Buyer a limited license to all pre-existing intellectual property contained in any deliverables provided to Buyer under this Contract, for Buyer's use on the Prime Contract with the Government. In accordance with DFARS 252.227-7013 (Rights in Technical Data – Noncommercial Items (Nov 1995)), DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (June 1995)) and DFARS 252.227-7015 (Technical Data – Commercial Items (Nov 1995)), Seller grants the Government and Buyer the rights delineated therein. These DFARS clauses are hereby incorporated into the Contract by this reference with the same full force and effect as if they were included as full text, except that "Contractor" shall mean "Seller."
- (c) Buyer's review of any designs submitted by Seller shall not relieve or in any way diminish Seller's obligations under this Contract. If Buyer identifies any non-conformance with Contract requirements in any Seller design, Seller, to the extent Seller agrees with such non-conformance, shall take the required corrective action and resubmit the affected design to Buyer. If the parties are unable to agree as to whether a design conforms to the Contract requirements, either party may treat the matter as a Dispute to be resolved as provided in the Disputes Section.
- (d) Seller shall comply with the regulatory requirements as administered by the Regulatory Bodies as set forth in the Specifications or Contract. If the Specifications specifically require work in excess of that required by a Regulatory Body, such specifically required work shall be performed by Seller, at its expense, as Contract Work required by this Contract. If the Specifications require work which is less than that required by a Regulatory Body, Seller shall perform, at its expense, the work required by the Regulatory Body as Contract Work required by this Contract.
- (e) Notwithstanding any obligations of confidentiality set forth in the Contract, including this Section, during repair of the Vessel, Seller understands and agrees that the ABS and any other Regulatory Body is authorized to discuss and disclose to NASSCO-Mayport all submitted drawings, specifications, correspondence, and information of Seller.
- (f) Nothing in these Terms and Conditions shall be construed or interpreted to limit, or in any way restrict, the rights of the Government in regard to data it owns or has a right to use.

**12. Control Over Weekend and Holiday Performance**

Buyer reserves the right to declare by time written notice periods of "no weekend work" or "no holiday work" at the Facilities. Seller shall ensure that no Contract Work is performed in the Facilities, and that all of Seller's and Seller's suppliers' and subcontractors' employees are kept out of the Facilities on all affected weekends and holidays during such declared periods of "no weekend work" and "no holiday work". Seller shall not be responsible for any performance delays or claims for damages caused by such declared periods of "no weekend work" and "no holiday work".

**13. Default; Termination for Cause**

- (a) In advance of Seller's actual default, if in Buyer's opinion Seller is falling behind in its performance or is likely to breach the Contract, Buyer may request written adequate assurances from Seller that it remains able to perform the Contract. If Seller is unable or unwilling to provide appropriate assurances within a reasonable period of time, which in no event shall be less than three (3) business days, as requested, and then Buyer may proceed with termination for default immediately, provided however that such termination shall be without opportunity to cure.
- (b) With written notice to Seller, containing a reasonable time to cure, which in no event shall be less than three (3) business days, solely determined by Buyer, Buyer may terminate all or any part of this Contract: (i) if Seller fails to perform the Contract Work or deliver the Contract Products or Contract Work within the time specified by this Contract or any written extension; (ii) if Seller fails to perform any other material provision of this Contract; (iii) fails to make progress so as to endanger performance of this Contract; or (iv) Seller's right to conduct business is suspended, Seller becomes insolvent, or becomes subject to the appointment of a receiver or becomes subject to an assignment, reorganization or arrangement for the benefit of its creditors.
- (c) In the event Buyer terminates this Contract in whole or in part as provided above, Buyer may procure, goods or services similar to the Contract Work specified herein, and Seller shall be liable to Buyer for any excess costs for such similar procurement. If this Contract is terminated only in part, Seller shall continue the performance of this Contract to the extent not terminated.

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- (d) If Buyer terminates all or any part of this Contract:
- (i) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Contract Products or Contract Work, (ii) partially completed Contract Products or Contract Work, and (iii) Manufacturing Materials. Upon direction of Buyer, Seller shall also protect and preserve property in possession of Seller in which Buyer has an interest.
  - (ii) Buyer shall pay the price specified in this Contract for completed Contract Products or Contract Work. Buyer shall pay a proportionate share of the Contract Price for partially completed Contract Products or Contract Work. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at Seller's direct costs. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or the Government or the Owner against loss because of outstanding Liens or claims of former Lien holders.
  - (iii) If, after termination of this Contract for default, it is determined that Seller was not in default, or that the default was excusable, such notice of default shall be deemed to have been issued pursuant to FAR 52.249-2 (Termination for Convenience of the Government (Fixed Price)) incorporated herein and the Setoffs/Backcharges Section and the rights and obligations of the parties hereto shall, in such event, be governed by said clause.
- (e) The rights and remedies of Buyer under this Default Section are in addition to any other rights and remedies provided by law or under this Contract.

**14. Deliveries of Contract Products**

- (a) Deliveries are to be made both in quantities and dates specified in the Contract.
- (b) Without Buyer's prior written consent and acceptance, Buyer will not pay for, or return to Seller, any Contract Products that are delivered in excess of the quantity specified.
- (c) Seller is advised that NASSCO-Mayport is a C-TPAT (Customs-Trade Partnership Against Terrorism) certified company. If Seller deliveries are full (sealed) containers from countries outside the U.S., Seller is requested to execute a NASSCO-Mayport Supplier "Supply Chain Security Terms and Conditions" document and conform to U.S. C-TPAT security procedures in order to facilitate expedited U.S. Customs processing. Bulk type deliveries in open containers are excluded.

**15. 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 management with responsibility for this Contract, who shall negotiate in good faith to reach a resolution of the Dispute.
  - (ii) If resolution of the Dispute is not achieved within thirty (30) days of the initial referral described immediately above, the parties shall submit to non-binding mediation. This shall be accomplished, prior to either party taking action pursuant to paragraph (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 Commonwealth of 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

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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.
- (e) Until final resolution of any Dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.
- (f) Except as may be expressly set forth in these Military Terms and Conditions with the Government Contracting Officer's express consent, the Seller shall not acquire any direct claim or direct course of action against the U.S. Government.

**16. Environmental, Safety and Health if Seller Operates Within the Facilities**

**(a) Environmental**

- (i) Seller must communicate the Buyer's Environmental policies and all applicable environmental requirements to workers who will perform work on behalf of the Buyer before prior to arrival 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.
- (ii) 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".
- (iii) 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).
- (iv) Seller must obtain pre-approval for all chemicals or Hazardous Material that the Seller anticipates using in performing Contract Work at the Facilities. This requirement is specified in NIMS WI-PM-001-0-FL Sub-Contractor 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 Sheets (SDS) for the materials.
- (v) Seller shall inform Buyer of current Florida Department of Environmental Protection (FDEP) EPA ID number (if applicable). Seller will additionally comply with Local Standard Item 099-60SE, 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.
- (vi) 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.
- (vii) 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.

**(b) Safety and Health**

- (i) 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.
- (ii) 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



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in conjunction with Buyer's rights herein).

- (iii) 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.
- (iv) 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.
- (v) 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 (iii) Seller is required to provide proof of compliance with the requirements of 29 CFR 1910.1200.
- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) Seller shall immediately notify Buyer's EHS Department, in writing, upon receiving notice of any inspection from either United States OSHA or Florida OSHA representatives, of their work area at the Facilities. In the event of such an 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 Florida OSHA.
- (x) 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.
- (xi) 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 Z 87 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.

**17. Export Control Compliance and Cooperation Applicable when Buyer is Procuring from Seller in support of Prime Contracts with the Government**

- (a) The Vessel and the Contract Products or Contract Services are deemed to be "Defense Articles," and may require Buyer or Seller to furnish "Defense Services" and/or export "Technical Data" as contemplated by 22 CFR Parts 120 through 130, International Traffic in Arms Regulations ("ITAR"). The terms, "Defense Article," "Defense Service" and "Technical Data" are defined at 22 CFR 120.6, 120.9 and 120.10, respectively.
- (b) In performing this Contract, "U.S. Person" Seller, "Foreign Person" Seller or the U.S. office of any "Foreign Person" Seller, hereinafter individually or collectively referred to as Seller, shall comply with the ITAR. The terms, "U.S. Person" and "Foreign Person" are defined at 22 CFR 120.15 and 120.16, respectively.
- (c) Seller shall additionally comply with; 15 CFR Chapter VII, Subchapter C, Parts 730 through 774, Export Administration Regulations ("EAR"); the regulations issued by the Office of Foreign Assets Control, and all other applicable laws, regulations and orders that control the export of defense articles and "Dual-Use" items and associated technology. The term "Dual Use" refers to items that have both commercial and military applications, and is discussed at EAR §730.
- (d) Most Sellers will transact some amount of ITAR-controlled Defense Articles, Defense Services and/or Technical Data in the

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performance of the Contract. In support of the stringent requirements of the ITAR, Buyer will invoke additional export controls on Sellers whose scope of work requires the transaction of a moderate or large volume of ITAR-controlled Defense Articles, Defense Services and/or Technical Data.

- (e) All Sellers will comply with the following Sub-paragraphs (i) through (xii).
- (i) Seller acknowledges that Defense Articles, Technical Data and Defense Services furnished by Buyer to Seller are authorized for use only by Seller and may not be exported or re-exported without an export license or other approval from the Directorate of Defense Trade Controls ("DDTC").
  - (ii) Seller having an office incorporated to do business in the U.S. represents and warrants that, if it manufactures or exports Defense Articles, Defense Services or Technical Data, it is registered with the DDTC, in accordance with 22 CFR Part 122.
  - (iii) Seller having an office incorporated to do business in the U.S. shall apply for, and execute any documents required for Seller to lawfully export Defense Articles, Defense Services or Technical Data to any Foreign Person.
  - (iv) Seller acknowledges that a Foreign Person signatory to Seller's export authorization shall not re-export ITAR-controlled technical data or defense services to another Foreign Person subcontractor or supplier, unless that subcontractor or supplier is named as a Sub licensee in Seller's export authorization. A Sub licensee is a lower-tier Foreign Person subcontractor or supplier requires ITAR-controlled technical data or defense services as a prerequisite to providing goods and services to the Foreign Person signatory, in support of the signatory's scope of work.
  - (v) Seller's Foreign Person employees, Sub licenses or other Foreign Person subcontractors, suppliers or agents, at any tier, shall not participate in the performance of this Contract without Buyer's prior written consent.
  - (vi) Seller shall apply for, and execute any documents required for Seller to lawfully export Defense Articles, Defense Services or Technical Data to any foreign classification or survey provider, and shall notify any such provider, three (3) days in advance of each required classification or survey service, in the performance of this Contract.
  - (vii) Seller shall include Buyer and the Foreign Person who will receive Buyer's data and services directly from Buyer, as signatories to Seller's application for an export authorization, if in that authorization, Seller desires Buyer to export Technical Data or furnish Defense Services directly to the Foreign Person. Buyer may not export to a Foreign Person Sub-licensee.
  - (viii) Seller shall fully cooperate with Buyer regarding any request for documentation related to Buyer's application for an export authorization, and shall execute any export-related documentation required by Buyer.
  - (ix) Seller shall provide to Buyer, upon request, all licenses or other approvals obtained by Seller in compliance with export regulatory requirements related to this Contract, redacted if Seller desires to prevent disclosure of proprietary data.
  - (x) Seller shall notify Buyer immediately if Seller is listed in any export-related Restricted, Denied or Blocked Persons List, Debarred Parties List, U.S. Federal Register General Order, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any United States Government entity or agency.
  - (xi) Seller shall notify Buyer of any material change in Seller's organization including: a change in senior officers; the establishment, acquisition or divestment of any subsidiary, or any sub-licensee; or merger with, or acquisition by another entity, whether U.S. or foreign, within five (5) days of the event.
  - (xii) Seller shall request of Buyer, five (5) days in advance, in writing, any required access to the Facilities by any and all of Seller's employees, sub-licensees, subcontractors or other agents, at any tier, and shall include in any such request, the name and citizenship/nationality, (or in the case of dual or third country citizenship/nationality, the countries of citizenship/nationality), of each such person. For the purposes of this Contract; the term "national" refers to an individual's place of birth, all citizenships and all lawful permanent residencies of any country.
- (f) If Seller is not organized to do business in the United States, Seller nevertheless shall perform this Contract in compliance with the laws, regulations and terms set forth in paragraphs (a) through (d) and (e)(i), (e)(ii), (e)(iii), (e)(v), (e)(viii), (e)(x), (e)(xi) and (e)(xii) hereof.
- (g) If specified in the Purchase Order, Seller will additionally provide Buyer with a Technology Control Plan ("TCP") that meets the requirements of the DDTC guidance document titled, *Guidelines for Preparing Agreements*.
- (i) The TCP shall articulate how the Seller will comply with all ITAR requirements relevant to the scope of work defined in the Contract. Among other elements contained in the TCP, Seller will define physical, electronic and procedural processes in place to prevent unauthorized access to Defense Articles, Defense Services and/or Technical Data.
  - (ii) The DDTC *Guidelines for Preparing Agreements* may be accessed at:  
<http://pmdrtc.state.gov/licensing/agreement.html>

**18. 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

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in the performance or delivery schedule caused by such event.

**19. Furnished Property**

- (a) Buyer may provide property Furnished Property to Seller for Seller's benefit. Seller shall hold the Furnished Property on a bailment basis. Title to the Furnished Property shall remain with Buyer. Seller shall not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of the Furnished Property.
- (b) Seller bears the Risk of Loss and damage to the Furnished Property. Seller shall insure the Furnished Property with all-risk coverage, naming Buyer as loss payee. Buyer may enter Seller's premises at all reasonable times on a not-to-interfere basis to inspect the Furnished Property and Seller's records with respect thereto. At Buyer's request, and/or upon expiration, completion or termination of this Contract, Seller shall submit to Buyer, in an acceptable form, inventory lists of the Furnished Property and shall deliver the Furnished Property to Buyer, or Owner, as directed. If Seller does not release and deliver any Furnished Property as directed by Buyer, Buyer may obtain a writ of possession without notice, without posting a bond, and may enter Seller's premises without legal process take immediate possession of the Furnished Property.
- (c) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE FURNISHED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature, caused directly or indirectly by the Furnished Property, including without limitation, any loss of anticipatory damages, profits, or any other indirect, special or consequential damages; however, Buyer shall be liable to Seller if the cause of the damage is adjudged to be due solely to Buyer's gross negligence or willful misconduct or in the case of OCM or OEM defects in materials and workmanship, the OCM or OEM shall be adjudged liable. Buyer will coordinate with the OCM or OEM appropriate replacement via the separate contractual provisions Buyer holds with the OCM or OEM.
- (d) Seller shall not use, or permit any third party to use, the Furnished Property without Buyer's express written consent. Seller shall ensure that only qualified, properly trained persons use the Furnished Property and that such persons obey Buyer's applicable use procedures and requirements and applicable United States, state and local laws and regulations. The Furnished Property is provided "AS-IS," and in conjunction with the Indemnity and Limitation on Liability Sections, Seller is responsible to Buyer for all Risk of Loss or damage to the Furnished Property used by Seller.
- (e) In the event Buyer provides Government Furnished Property or Material ("GFP") to Seller in support of the Contract, the applicable FAR/DFARS clause shall apply for the GFP. Seller shall be strictly accountable for any property of the Government that comes into the control of Seller, including, but not limited to, any material removed from any Vessel, oils or fuels. Seller shall protect, preserve and maintain records of all such property in conformance with the requirements of FAR Subpart 45.5. Sellers' representatives picking up GFP or government property are required to have proper identification and proof of employment by the Seller, as well as be on the Sellers list of authorized people to pick up GFP. Authorized Personnel must be submitted to Buyers' Purchasing Manager prior to material being issued.

**20. 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 toward securing favorable treatment as a subcontractor or supplier.

**21. Guaranty in Support of Prime Contracts**

- (a) If at any time during the Guaranty Period the Contract Work fails to comply with this Contract or any weakness, deficiency, failure, breaking down, or deterioration in material or workmanship not caused by Buyer, the Government, or Owner, or by ordinary wear and tear ("Guaranty Deficiency") in the Contract Work shall appear or be discovered, Seller shall repair or replace all material and equipment necessary to correct such Guaranty Deficiency at its sole expense and it shall be liable for any incidental travel and/or transportation costs which may be incurred. Seller guarantees such material and equipment repairs or replacements for a further period of ninety (90) days for Contract Work related solely to repair services on an existing Vessel, from the date of completion of such repairs or replacements or to the end of the Guaranty Period, whichever is later.
- (b) Seller's Guaranty, and Buyer's Guaranty rights against Seller, shall be separately assignable to the Government or Owner, as the case may be.

**22. Indemnity**

- (a) 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 or suppliers and 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 performance of this Contract, (iii) claims by Seller, its employees or Seller's suppliers' or subcontractors and 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 suppliers or subcontractors performing the 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 or suppliers, and excluding only claims and liabilities based on Buyer's sole negligence or willful misconduct.
- (b) Additionally, Seller shall reimburse, indemnify, and hold harmless NASSCO-Mayport for, any taxes, penalties, or other liabilities

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assessed against Seller or NASSCO-Mayport under Code §4980H with respect to Seller employees assigned to NASSCO-Mayport due to Seller's failure to: (i) offer "minimum essential coverage" under an "eligible employer-sponsored plan," each within the meaning of Code §5000A(f)(1)(B); or; (ii) offer coverage that is not "affordable" or fails to provide "minimum value," each within the meaning of Code §36B(c)(2)(C) and §4980H(b) and related regulations.

- (c) Provided, however, that in no event shall indemnity under this Section extend to any taxes, penalties, or other liabilities under the under Code §4980H where such tax, penalty, or other liability results from the imposition of penalties under (i) Code §4980H(a), as a result of the failure by the NASSCO-Mayport to make offers of minimum essential coverage to its employees under an eligible employer-sponsored plan, or (ii) Code §4980H(b) as a result of NASSCO-Mayport's making an offer of minimum essential coverage to its employees under an eligible employer-sponsored plan that is either unaffordable or fails to provide minimum value.
- (d) If NASSCO-Mayport is notified by any government entity of NASSCO-Mayport's potential liability for any such taxes, penalties, or other liabilities relating to any Seller employee, Seller shall fully cooperate, at Seller's reasonable expense, with NASSCO-Mayport's efforts to object to or appeal any such determination of liability or potential liability.
- (e) This provision survives termination of the Contract and is not subject to the Limitation on Liability Section. Buyer may assign its right to be indemnified hereunder.

**23. 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 benefits, and medical and/or health benefits), state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings for all of its employees. The Seller and NASSCO-Mayport intend that (i) Seller and not NASSCO-Mayport be deemed the "common law employer" (within the meaning of Treas. Reg. § 31.3401(c)-1(c)) of employees placed with NASSCO-Mayport by Seller, and (ii) such employees be deemed the common law employees of Seller and not NASSCO-Mayport. Subject to the limitation and requirements set forth below, Seller may employ subcontractors for components or work on the Vessels. The following procedures will be adhered to with respect to Seller's subcontractors: (i) Seller will ensure that any subcontractor utilized will perform all work to standards no less than those specified in this Contract and the design and Specifications; (ii) Representatives from NASSCO-Mayport and the eventual customer shall be permitted to have reasonable access to any subcontractor site and those representatives will be afforded such opportunity to inspect all work of subcontractor to the same extent as if the work has been done by Seller; (iii) Seller may not subcontract any repairs of a Vessel to any third party without the prior written consent of the Buyer; and (iv) all subcontractors of Seller shall provide guaranties consistent with those contained in this Contract to Seller such that Seller can pass them along to Buyer and the eventual Owner of the Vessels.

**24. Inspection and Acceptance**

- (a) The Contract Work (which term throughout this Inspection and Acceptance Section includes, without limitation, raw materials, components, intermediate assemblies, data, manufacturing processes and quality systems) shall be subject to inspection and testing by Buyer, the Government, and governmental authorities, classification societies or other Regulatory Bodies having jurisdiction over the Vessels or the Contract Work at all places and reasonable times, including, but not limited to, Seller's subcontractors' and Seller's suppliers' facilities. Buyer and Seller shall provide each other with timely advance notification of all visits and requests for visits by any such Governmental authorities, classification societies or other Regulatory Bodies.
- (b) The Government may, from time to time, designate certain Contract Work for Government Source Inspection ("GSI"). Upon such designation, Seller shall furnish advance notification of the time (i) when Seller's inspection or tests will be performed in accordance with the terms and conditions of this Contract and (ii) when the Contract Work will be ready for Government Source Inspection. The period and method of the advance notification, and the Government representative to whom it shall be furnished, shall be specified by the Government, but shall not require more than two (2) workdays of advance notification if the Government representative is in residence in Seller's plant, nor more than seven (7) workdays in other instances.
- (c) Approval by the Government and/or Buyer as required under this Contract and applicable specifications shall not relieve Seller of its obligation to comply with the Specifications and with all other requirements of the Contract, nor shall it impose upon the Government or Buyer any liability it would not have had in the absence of such approval.
- (d) Acceptance of delivery of the Contract Products does not alone constitute acceptance of performance under this Contract. The inspection or testing of any portion of the Contract Work does not relieve Seller from its responsibility to correct defects or non-conformities which may be discovered in Contract Work not inspected or tested or which is discovered during the Guaranty Period. If the Contract Work is not ready at the time specified by Seller for inspection or testing, Buyer may deduct from the Contract Price the additional costs to Buyer of inspection or testing. Buyer may further deduct from the Contract Price any reasonable costs to Buyer of inspection or testing when prior rejection makes re-inspection or re-test necessary.
- (e) If any inspection or testing is performed on Seller's (or its subcontractors or suppliers) premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of inspectors in the performance of their duties. The failure to inspect and accept or reject the Contract Work shall neither relieve Seller from responsibility for performing the Contract Work, nor impose liability on Buyer. Seller shall be solely responsible for any reduction in value of samples used in any inspection or test.
- (f) Buyer may reject nonconforming Contract Work. Seller shall have a reasonable opportunity to examine the Contract Work before it is rejected. Contract Work, which has been rejected, shall not be re-tendered for acceptance until the defect or nonconformity is corrected.

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- (g) The Contract Work shall be accepted when, upon final inspection and testing, it is found to conform to this Contract. If any time prior to such acceptance, the Contract Work is found to be defective in material or workmanship, or otherwise does not conform to this Contract, Seller shall correct or replace such defective Contract Work at Seller's expense. This right specifically extends to, without limitation, any period after acceptance of the Contract Work and prior to commencement of the Guaranty Period. Any and all such defects shall be corrected and made good within the stated notice by Buyer to Seller. In this respect, Seller agrees and acknowledges that there will be instances where immediate corrections are going to be mandated during sea trials. If any such defect is discovered between the Vessel's acceptance trials and Delivery of the Vessel to the Government, any and all such defects shall be corrected and made good as soon as practical, as determined by Buyer in its sole discretion, after notice thereof by Buyer to Seller.
- (h) Final acceptance of the Vessel by the Government shall be conclusive except for Seller's warranty and Guaranty obligations during the Guaranty Period and except with respect to latent defects, fraud or gross mistakes amounting to fraud. In such cases, Buyer, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right in its sole discretion to require Seller (i) at no increase in the Contract Price, to repair or replace the defective or nonconforming Contract Work at the original point of delivery, or at Seller's plant, or at the location of the Vessel at Buyer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between Seller and Buyer; provided, that Buyer may require a reduction in Contract Price if Seller fails to meet such delivery schedule, or (ii) within a reasonable time after receipt by Seller of notice of defects or nonconformance, to repay such portion of the Contract as is equitable under the circumstances if Buyer elects not to require correction or replacement. When Contract Work is returned to Seller, Seller shall bear the transportation cost from the original point of delivery to Seller's plant and return to the original point when that point is not Seller's plant. If Seller fails to perform or act as required in (i) or (ii) above and does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, Buyer shall have the right to replace or repair such Contract Work and charge to Seller the cost occasioned Buyer thereby.
- (i) If Seller fails to promptly replace or correct rejected Contract Work, Buyer may either (i) correct such Contract Work on Seller's account, (ii) equitably reduce the Contract Price to reflect the reduced value of any defective Contract Work accepted by Buyer that cannot be corrected by re-performance, repair or replacement, or (iii) terminate for default as provided in the Default Section. Seller authorizes Buyer, its affiliates, agents and subcontractors, and the Government and the Government's subcontractors, to repair, reconstruct or rebuild the Contract Products using Seller's applicable intellectual property without payment of any royalty or other compensation to Seller.

**25. 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) Worker's Compensation Act insurance with the following limits:
  - (i) Employers Liability Each Accident, \$500,000
  - (ii) Employers Liability Disease Policy, \$500,000
  - (iii) Employers 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) 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 NASSCO-Mayport**  
**200 Ligon Street**  
**Norfolk, VA 23523**

- (f) 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 NASSCO-Mayport upon issuance of the Contract and renewals thereof sent to Buyer at least ten (10) days prior to the expiration of the respective policy terms. The policies referred to above in paragraphs (a) and (b) shall be endorsed to name Buyer as an "additional insured," and the certificates provided to Buyer shall reflect such endorsement. The policies referred to above in paragraphs (c) and (d) shall contain a waiver of subrogation in favor of Buyer.
- (g) 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, 599 Wonderwood Drive, Jacksonville, FL 32233.

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- (h) 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.

**26. Invoices**

- (a) Seller shall submit invoices as follows: (i) The Contract Work must be detailed for each date/item worked, and the price of such Contract Work; (ii) Seller's invoice number and the Purchase Order number, and line item number, must be included; and (iii) if the invoice reflects any progress or milestone payments, the invoice must comply with the Buyer's "Special Provisions for Progress Payments" or "Provisions for Milestone Payments." The invoice shall contain itemized prices, discounts, order number, transportation description and name of carrier. The invoice shall separately list all United States, state and local taxes, duties, tariffs and similar fees imposed by any government that have been paid by Seller. Invoices incorrectly or incompletely executed will be returned for correction or completion.
- (b) The cash discount period, notwithstanding anything to the contrary on any packing list or invoice, will commence on the date Buyer receives the Contract Products or Contract Work in conformance with the packing list and a complete and correct invoice.
- (c) For Contract Products or Contract Work, an original invoice must be submitted no earlier than the day of shipment. To be timely, all invoices must be received within thirty (30) days after completion of the Contract Work. **Invoices received later than sixty (60) days after completion of the Contract Work are rejected and void and Seller's hereby waives the right to payment of these invoices.**
- (d) In the event that this Contract is in furtherance of a cost reimbursement contract, then the following shall apply. Seller is provided notice that Buyer will not have the cost of this Contract reimbursed under the Prime Contract until Buyer has been paid. If Seller fails to provide an invoice in a timely manner, Buyer's cost for Contract Products or Contract Work incurred hereunder may be declared unallowable by the Government with subsequent refusal by the Government to reimburse Buyer or the prime contractor, as may be applicable. Seller is required, as a specific deliverable under the Contract to invoice for Contract Products or Contract Work ordered herein within thirty (30) days of the completion of its obligations hereunder.
- (e) If expressly provided on the face of Buyer's Purchase Order, Seller shall receive progress payments in the same percentages and calculated in the same manner as those provided in Buyer's contract with Government or the prime contractor. Determination of the percentage of completion of the Contract Work shall be made by Buyer and the Government or the prime contractor, as applicable; and their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to Buyer, including such substantiation of costs incurred or progress made, or both, as Buyer may require. Such progress payments as are justified by suitable invoices and substantiation will be made within thirty (30) days of Buyer's receipt of progress payments for the same period as progress covered in Seller's invoices that are made under the Prime Contract. If Buyer's contract so provides, title to all work in process, materials, equipment or other property covered by progress payments shall vest in the Government. This provision shall not be construed as affecting any acceptance or in any way relieving Seller of its obligations of strict and timely performance, warranties or any other obligations hereunder.

**27. Liens with Right to Offset**

- (a) Seller waives any and all rights to any Lien, and Seller shall not permit or cause any Lien by Seller or by any of Seller's subcontractors or suppliers to lien or attach against the Vessel, Contract Products, Contract Work or Furnished Property. However, to the extent that this Contract is subject to a payment schedule, Buyer may from time to time issue Seller progress payments and receive simultaneously with the same a waiver and/or release of any Lien rights and/or applications for certification of progress payments and/or funds received to a particular date-certain. At the conclusion of the Contract, Buyer will not release final payment without a fully executed "Unconditional Waiver and Release upon Final Payment" from Seller and a release of all Liens from any of Seller's subcontractors.
- (b) Buyer shall have the right to withhold any payment until Seller shall furnish written releases and waivers of all rights to claim or file Liens, properly executed by Seller and its subcontractors and suppliers. **Seller's acceptance of the final payment shall constitute satisfaction in full and release of all claims or demands by Seller against Buyer arising out of or in any way connected with this Contract.** If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay same and deduct from funds due hereunder, or, if such claims are Disputed, Buyer may withhold sufficient funds to pay same until such claims are adjusted. Seller shall immediately discharge or cause to be discharged any Lien which at any time is filed against property of Buyer, the Government or the Owner with respect to or arising from the Contract Work. If any such Lien is not immediately discharged, Buyer may discharge or cause to be discharged same at the expense of Seller by offset or otherwise.

**28. Limitation on Liability**

**EXCEPT FOR THE RIGHTS AND OBLIGATIONS SET FORTH IN THE INDEMNIFICATION AND GUARANTY 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**

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**OR FOR A PARTICULAR PURPOSE THAT MAY FLOW TO IT FROM BUYER.**

**29. Littering**

- (a) As a result of Congress approving an international agreement (ANNEX 5 TO THE MARPOL Convention), effective 30 May 1989, the U.S. Coast Guard will levy a fine of up to \$25,000 against the individual and/or the employer of the individual caught disposing of any refuse into the water.
- (b) By acknowledgment of this Contract, you hereby certify responsibility for Seller's employees' actions while the Seller is working for you on NASSCO-Mayport property and Facilities.

**30. New Materials and Authorized Sources**

- (a) Seller represents and warrants to Buyer and Buyer's customer 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 OCM or 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.

**31. No Advertising**

Without Buyer's prior written consent, Seller is prohibited from advertising or publishing any information about this Contract or its Contract Work, and is prohibited from using Buyer's trademarks or trade names.

**32. 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 company 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.

**33. 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:

To Buyer:

As indicated on face of the Purchase Order  
General Dynamics NASSCO-Mayport  
599 Wonderwood Drive  
Jacksonville Florida 32233  
Attn: Purchasing Manager

**34. Order of Precedence**

In the event of any conflict or inconsistency between any provisions of this Contract, wherever appearing, such 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) the Special Terms and Conditions, if any; unless the FARS, DFARS or specific Prime Contract clauses are required to take precedence by law;
- (d) the Specifications, and within the Specifications, Specifications shall prevail over drawings; and
- (e) other documents incorporated by reference into this Contract.

**35. Packing and Shipment**

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage, unless otherwise specified and 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) The Contract Products must be reasonably and adequately preserved and protected for storage at the Facilities, and for handling and

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protection during the shipbuilding process and after final installation.

- (c) The Purchase Order number, Purchase Order line item number NASSCO-Mayport 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 the U.S., pallets must be pest free, and preferably use heat (not chemically) treated bark free wood.

**36. Payment, Taxes and Duties**

- (a) 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. Buyer shall have a right of set-off against payments due for amounts claimed under this Contract or any other contract between the parties. Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.
- (b) 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 the refund of duties, taxes or fees, belong to Buyer. Seller shall provide all information necessary to permit Buyer to receive these credits.
- (c) Payment shall not be construed as acceptance of the Contract Work or Contract Products or waiver of any term or condition of the Contract.
- (d) Seller will receive partial payments based upon a mutually agreed percent completion on a monthly basis consistent with the Navy overall estimated progress. Payments to Sellers will be made upon receipt from the Navy by NASSCO-Mayport of payments for the same progress period. A retainage may be held until final ship completion as determined by the Buyer set forth on applicable Purchase Order. The procedure and schedule for progressing pay-out sheets, invoicing and payments will be provided at beginning of the contract.

**37. Pricing**

- (a) 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.
- (b) Seller agrees that for all changes, replacement part procurement, and spare parts procurements, the profit proposed shall be consistent with that included in the Contract Price pursuant to the Purchase Order issued prior to any such changes and subject to audit by Buyer.

**38. Quality**

- (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 and the Government or the Owner.
- (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 Corrective Action 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 responsive reply in writing to any Corrective Action Request within three (3) days of receipt.

**39. Rights for Audit**

Seller agrees to permit authorized Buyer and Government Representatives to interview Seller's personnel, review Seller's accounting and cost control systems, and inspect books, records, accounts, and other documents relating solely to the Contract so as to enable Buyer and Government to perform cost analysis, and make copies thereof, as necessary to audit and verify the completeness and accuracy of information provided to Buyer. Such access shall occur at reasonable times and with reasonable notice, during the performance of the Contract.

**40. 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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- (d) Seller shall cooperate with all other subcontractors and suppliers working in support of Buyer's contract with the Owner. Seller agrees to accept direction from Buyer with respect to performance, schedule or reschedule of Contract Work as necessary, attend meetings as requested by Buyer, and to be responsible for its personnel working harmoniously with other subcontractors and suppliers and Owner's personnel, all at no additional cost to Buyer.

**41. Screening: Background Check, Credit History Check and Drug Screen}**

- (a) This Section applies to any individual who is required to enter the 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 in order to obtain a NASSCO-Mayport badge before they are allowed to have unescorted access to the Corporate Facilities or access to the Buyer's computer networks.

Minimum screening requirements are:

**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:

- (a) I-9 information (such as Social Security number or Registration number)
- (b) E-Verify
- (c) Name (including all aliases, nicknames and former names) and all addresses for past seven (7) years
- (d) Employment history - Employers and dates of employment seven (7) years
- (e) Job titles seven (7) years
- (f) Reason for termination of prior employment (if disclosed) seven (7) years
- (g) Education/Training - all pertinent degrees, professional licenses, certifications, etc.
- (h) Criminal history - prior criminal convictions and guilty pleas (federal and state) seven (7) years, excluding juvenile offenses and offenses sealed or expunged by law
- (i) Citizenship status
- (j) Past revocation, denial or suspension of a Government security clearance
- (k) References (if any)
- (l) Any position-specific requirements deemed necessary/appropriate by NASSCO-Mayport.

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 the 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.

**Credit History Check:** For all Seller's individuals whose work at the Facilities 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 Seller's individuals' access to Buyer Facilities.

**Drug Screen:** Buyer is a drug-free Facility consistent with the Drug-Free Workplace Act of 1988. Every Seller individual working at the Facilities must be drug tested prior to each Seller's individuals first day at the 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 the Facilities. Upon request by Buyer, Seller agrees to provide Buyer within one (1) business day with a copy of such documents for any Seller individual assigned to perform services pursuant to this Contract.

Seller shall require each of Seller's or Seller's individuals assigned to work at the Facilities to be re-drug tested if their service at the Facilities is interrupted for a period of ninety (90) days or longer.

**42. Security, if Seller Operates Within the Facilities**

Buyer's security policies and procedures regarding all of Seller's employees, and its subcontractors and suppliers who will perform duties within the On Military Facilities are mandatory. Buyer's security policies and procedures are located at Buyer's website at <http://www.nassconorfolk.com> under the heading "Security Access and Procedures." Willful or repeated negligent noncompliance by Seller or any of its subcontractors or suppliers with any such security policies or procedures shall constitute a default under this Contract.

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**43. Seller's Personnel and Management**

- (a) Unless otherwise addressed in the Contract, during on-going operations at the Facilities, Seller shall reassign or remove from the Facilities any of Seller's or Seller's subcontractors' or suppliers' employees immediately, 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 or suppliers, within a reasonable period of time, at Buyer's request, as determined by Buyer at Buyer's sole discretion.

**44. Setoffs/Backcharges**

- (a) 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:
- (b) 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;
- (c) 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 NASSCO-Mayport's in-yard production need; and/or
- (d) 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:
  - i. Incurred labor costs including all payroll additives;
  - ii. Incurred net delivered material costs;
  - iii. Incurred lower-tier subcontractor or 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 Contract schedule;
  - v. Application of relevant manufacturing, material overhead and S, G&A expense to the work performed by Buyer; and
  - vi. Profit - appropriate profit (fee) as defined in FAR 15.404-4
- (e) Buyer shall have a right of set - off against payments due for amounts claimed under this Contract or any other contract between the parties. Should any withholding for deficiencies occur at the Prime Contract level as a result of Contract Work performed by Seller, a corresponding withholding may be taken by Buyer. Any amounts so withheld will be paid upon correction of the deficiency and approval at the Prime Contract level for payment. There shall be no interest due to Seller on any monies withheld by Buyer.

**45. Shelf Life Requirements**

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

**46. Survival**

- (a) If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:
  - i. Acceptance, Integration, Amendment and Interpretation
  - ii. Buyer's Medical Treatment if Seller operates within the Facilities
  - iii. Compliance with Ethics Compliance with Laws
  - iv. Confidentiality and Third Party Intellectual Property Rights
  - v. Disputes
- (b) Environmental; if Seller Operates within the Facilities
  - i. Export Control Compliance and Cooperation Applicable when Buyer is procuring from Seller in support of Prime Contracts with the Government
  - ii. Guaranty in support of Prime Contracts
  - iii. Indemnity
  - iv. Independent Contractor

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- v. Insurance
- vi. No Advertising
- vii. Non-Waiver
- viii. Order of Precedence
- ix. Payment, Taxes and Duties
- x. Setoff/Back-charges
- xi. Survival

**47. Termination for Convenience**

Buyer may terminate this Contract in whole or in part for Buyer's convenience in accordance with the provisions of the incorporated FAR clause applicable to termination for the convenience of the Government, except that Seller shall submit any final termination settlement proposal to Buyer within sixty (60) days from the effective date of termination.

**48. Time of Performance**

Seller shall perform the Contract Work and/or deliver the Contract Products in a diligent manner and in no event later than the time(s) specified on the face of the Purchase Order, unless the delay arises from causes beyond the control and without the fault or negligence of Seller, in which case, Seller and Buyer shall cooperate in good faith to agree upon a revised completion date. Time of performance specified in this Contract is of the essence of this Contract. If requested by Buyer, Seller shall submit to Buyer, in a format acceptable to Buyer, a detailed schedule for performance of the Contract. Buyer may require Seller, at Seller's expense, to increase its forces or shifts or to use overtime, to use expedited shipping means, or to take such other measures as may be necessary to meet or recover schedule for schedule slippages not attributable to a Force Majeure. 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, and the delay is not attributable to causes beyond the control of Seller, then Seller shall, within a reasonable period of time, which in no event shall be less than three (3) business days of a written request by Buyer, provide adequate assurances to Buyer that it will not breach the Contract and assure timely performance and represent to Buyer in writing its best completion date. If the represented completion date is not within the original time for completion of performance of this Contract, Buyer may immediately terminate this Contract for default in accordance with the Default Section, provided however that such default shall be without opportunity to cure. Buyer shall further have the right, but not the duty, and without waiver of any other rights and remedies which it may have, and regardless of Seller's best completion date, 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.

**49. Title and Risk of Loss**

- (a) Unless otherwise provided, title to the Contract Products shall pass to Buyer upon delivery of the Contract Products in accordance with this Contract. A rejection or other refusal by Buyer to receive or retain the Contract Products, whether or not justified, or a justified revocation of acceptance, re-vests title to the Contract Products in Seller.
- (b) Unless otherwise agreed by the parties, the Risk of Loss shall be as determined by the shipping terms set forth on the face of the Contract and:
- (c) Seller shall be responsible for Risk of Loss until the Contract Products are delivered at the designated delivery point, regardless of the point of inspection;
- (d) Seller shall remain solely responsible for Risk of Loss until Buyer accepts or rejects the Contract Products, unless such loss, destruction or damage results from the gross negligence of Buyer; and
- (e) Seller shall remain solely liable for Risk of Loss, after Buyer's rejection, unless such loss, destruction or damage results from the gross negligence of Buyer.

**50. Waiver**

The failure of Buyer to insist on strict performance of any provision of this Contract shall not be construed as a waiver of any such provision, and such failure shall not affect Buyer's right to exercise any right or remedy under this Contract or at law.

[INTENTIONALLY LEFT BLANK]