



PROCUREMENT TERMS & CONDITIONS

General Provisions

1. Acceptance of Purchase Order

Agreement by Seller to furnish the materials or services hereby ordered, or its furnishing such materials or services in whole or in part, shall constitute acceptance by Seller of this purchase order subject to these terms and conditions. In the event that this purchase order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect unless specifically agreed to by Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by Buyer, constitute the entire agreement between the parties.

2. Shipping Instructions

- (a) Seller shall be responsible for ensuring the proper packaging of materials hereunder.
- (a) Unless otherwise directed, all products shipped in one day from and to a single location must be consolidated on one bill of lading or air bill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this purchase order or any authorized changes thereto.
- (b) For material purchased F.O.B. origin, the Seller shall not insure and not declare a value except when transportation rates are based on "released value," in which instance the Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.
- (c) Seller shall at all times comply with Buyer's written shipping instructions.
- (d) Seller shall submit all required shipping papers to Buyer prior to final payment.

3. Delivery; Notice Of Delay

- (a) Time is and shall remain a very important element of this purchase order, and no acts of Buyer, including without limitation modifications of this purchase order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay or threat to delay the timely performance of this purchase order.

4. Termination for Convenience

- (a) Buyer may by notice in writing direct Seller to terminate this purchase order or work under this purchase order in whole or in part at any time, and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance hereof, Buyer and Seller shall have all rights and obligations accruing to it both at law or in equity, including Buyer's rights to title and possession of products paid for.
- (b) Seller shall be reimbursed for actual, reasonable, and substantiated costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.
- (c) Seller's obligations under the warranty, patent, and confidentiality provisions of this purchase order shall survive such termination.

5. Termination For Default

- (a) Buyer may by notice in writing direct Seller to terminate this purchase order or work under this purchase order in whole or in part at any time for breach of any one or more of its terms. Further, the insolvency of the Seller or adjudication of bankruptcy of the Seller or the filing of a voluntary or involuntary petition of bankruptcy by the Seller or the making of an assignment for the benefit of creditors by the Seller shall also be a breach hereof.
- (b) In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law including those set forth in Article 2 of the Uniform Commercial Code or in equity.
- (c) Seller's obligations under the warranty, patent, and confidentiality provisions of this purchase order shall survive such termination.

6. Disputes

- (a) Any controversy or claim arising out of or relating to this purchase order or the breach thereof may be settled at Buyer's sole discretion either by submitting the claim to: (i) a court of competent jurisdiction or (ii) binding arbitration, before a single arbitrator, in the state and under the laws of the state from which this purchase order is issued, in accordance with the commercial arbitration rules of the American Arbitration Association; and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof.
- (b) Pending resolution or settlement of any dispute arising under this purchase order, Seller will proceed diligently as directed by Buyer with the performance of this purchase order.

7. Remedies

- (a) The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.
- (b) In no event shall Seller be entitled to anticipatory profits or to special (including multiple or punitive), incidental, or consequential damages.

8. Confidentiality

- (a) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other products supplied to Buyer by Seller shall be disclosed to Buyer on a non-confidential basis and may be used and/or disclosed by Buyer without restriction.
- (b) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other products which are (i) supplied to Seller by Buyer or (ii) obtained by Seller and paid for by Buyer in the performance of this Purchase Order shall be maintained as confidential by Seller, shall be used only for purposes of providing products or services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such products supplied by Buyer shall be promptly returned to it on request or upon completion of this order.

9. Buyer's Property

- (a) All confidential information plus all drawings, tools, jigs, dies, fixtures, materials, and other products supplied by Buyer shall be and remain the property of Buyer; and Buyer shall have the right to enter Seller's premises and remove them at any time without being guilty of trespass or liable to Seller for damages of any sort.
- (b) All such products shall be used only in the performance of work under this purchase order unless Buyer consents otherwise in writing.
- (c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's prior written consent.
- (d) Any invention or similar intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of confidential information supplied by Buyer shall be considered as being a "Work Made for Hire" and shall be and become the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto.

10. Release of Information

Seller shall not publish any information developed under this purchase order nor distribute it nor make any news release about the subject matter of this purchase order without prior approval of the Buyer.

11. Order of Precedence

In the event of a conflict between the requirements of the Purchase Order, drawings or specifications, the requirements of the Purchase Order shall govern over drawings and drawings shall govern over specifications. In cases of ambiguity in the Purchase Order, drawings or specifications, the Seller must, before proceeding, consult the Buyer whose written interpretation shall be final. Unless otherwise specified, all referenced standards, specifications or other revision controlled requirement documents, the revisions in effect are as of the date of the Purchase Order.

12. Subcontracting and Flow Down

- (a) No lower-tier subcontract or purchase order valued at (i) \$100,000 or more or (ii) 10 percent of the indicated value of this purchase order, whichever figure is less, shall be issued by the Seller to any party for furnishing any of the completed or substantially completed supplies (except spare parts) or other work herein contracted for without the written approval of the Buyer.
- (b) Requirements to the seller shall flow down to sub-tier suppliers the applicable requirements in the Purchasing documents, including key characteristics where required.

13. Conflict Minerals

By accepting these terms and conditions, Seller agrees that conflict minerals (Tantalum, Tin, Tungsten and Gold), as defined by the Frank-Dodd Wall Street Reform and Consumer Protection Act, shall not be used in any product supplied by the Seller to Magnetika, Inc. The Seller further agrees to timely respond, to the best of its knowledge and belief following an appropriate due diligence inquiry, to any request by Magnetika, Inc. for information on the source and chain of custody of conflict minerals necessary to the functionality or production of a product manufactured by you or supplied by you to Magnetika, Inc. In addition, you understand and acknowledge that any information you provide in this regard may be used by Magnetika, Inc. to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

14. Counterfeit Products

By accepting these terms and conditions, Seller agrees that the products delivered to Magnetika, unless specifically stated otherwise in the Purchase Order, shall (i) be new; (ii) be and only contain materials obtained directly from the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM) or an authorized OEM/OCM reseller or distributor; (iii) not be or contain Counterfeit items; (iv) contain only authentic, unaltered OEM/OCM labels and other markings; and (v) be free from defects in workmanship, materials, and design and be in accordance with all the requirements specified in the purchase order.

15. Notification/Approval of Changes

No changes in materials, processes, procedures, design interfaces or software which affects the form, fit, function, safety, weight, maintainability, service life, reliability, replaceability, or interchangeability of the products to be delivered to Magnetika, Inc. shall be made without prior written approval/acknowledgement from the Magnetika, Inc. Buyer. Prior to implementing such a change the Seller shall notify Magnetika, Inc. of the impending change. Additionally, the Seller shall notify the Buyer of any of the following events: (1) Plant Relocation, (2) New Equipment, (3) Change in Ownership and/or Management, (4) Name/ Cage Code Change, (5) Equipment Relocation, (6) Design Change, (7) Drawing Conflict and (8) Sub-Tier Supplier Change. Commercial Off The Shelf (COTS) products are excluded from this requirement.

16. Warranty

- (a) Seller warrants the materials delivered or services rendered on this purchase order to be free from defects in workmanship, materials, and design and to be in accordance with Buyer's specifications, drawings, and/or samples in all respects. These warranties shall survive final acceptance and payment pursuant to UCC 2-601 and 2-608.
- (b) This warranty entitlement covers both Buyer and Buyer's customers.
- (c) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. Remedies include replacement (if Buyer so elects) of nonconforming products.
- (d) Nonconforming product shall not be shipped to the Buyer without written authorization. Unless disposition instructions are specified elsewhere in the Purchase Order or its referenced documents, the Seller is to contact the Buyer for instructions to address the specific nonconformance(s) (e.g., Waiver, Material Review Board, Authorization to Ship Nonconforming Product).

17. Inspection and Records

- (a) All material and workmanship shall be subject to inspection by Buyer, the Buyer's customer and/or regulatory authorities before, during performance, and after delivery. The Buyer may require Seller to repair or replace rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repacking, and/or re-inspection by Buyer shall be at Seller's expense.
- (b) If inspection and tests are made on the premises of Seller or Seller's lower tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, records, and assistance for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Article are supplementary to and not in lieu of the provisions of (a) above.
- (c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the purchase order.
- (d) When specified on the Purchase Order, the Seller shall perform a First Article Inspection on a representative item from the production run. The Seller shall submit the First Article part(s), together with data documenting the results of Seller's First Article test/inspection, including actual dimensions or values for each specified characteristic. The First Article part(s) shall be clearly identified by tagging, serialization or other positive method.
- (e) Seller shall retain records relating to shipments for delivered material for a minimum period of (7) seven years, unless otherwise specified. Buyer, Buyer's customer, and regulatory authorities involved in the order shall have right of access to these records.

18. Changes

Buyer shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this purchase order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the purchase order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted in writing within 20 days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse the Seller from proceeding with this purchase order as changed pending resolution of the claim.

19. Patents

Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trade mark, or other proprietary rights. Seller shall save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend. Seller may replace or modify infringing products with comparable products of substantially same form, fit, and function so as to remove the source of infringement.

20. Taxes

Seller agrees to pay all local, state, and Federal excise, sales, and use taxes when applicable (unless otherwise agreed in writing).

21. Assignments

Seller may not assign any rights or obligations due or to become due under this purchase order without the prior written consent of Buyer. Buyer may assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Buyer's customer. Buyer shall have the right at any time to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries pursuant to this purchase order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates.

22. Compliance With Law; Gratuities

- (a) Seller warrants that the materials to be furnished and the services to be rendered under this purchase order shall be manufactured, sold, and used in compliance with all relevant Federal, state, and local laws and regulations. All invoices must carry the following certificate: "Seller certifies that with respect to the production of the articles and/or the performance of the services covered by the invoice, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof."
- (b) Seller certifies that all equipments and materials delivered under this purchase order are in conformance with the latest OSHA requirements.
- (c) The Seller certifies that in the performance of this purchase order, it will comply with all applicable U. S. Department of Transportation regulations on hazardous materials and any other pertinent Federal, state, or local statutes, laws, rules, or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this certification. The foregoing is in addition to and not in mitigation of any other requirements of this purchase order.
- (d) Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986 with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions, or performance of any contract with or purchase order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- (e) For all government-related purchase orders, the following clauses set forth in the FAR in effect as of the date of the Prime Contract are incorporated herein by reference. In all clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under the purchase order.

a	Officials Not to Benefit	52.203-1
b	Gratuities	52.203-3
c	Covenant Against Contingent Fees	52.203-5
d	Variation in Quantity	52.212-9
e	Equal Opportunity	52.222-26
f	Convict Labor	52.222-3
g	Affirmative Action for Handicapped Workers	52.222-36
h	Service Contract Act of 1965 as Amended	52.222-41
i	Privacy Act	52.224-2
j	Restrictions on Certain Foreign Purchases	52.225-11
k	Buy American Act - Supplies	52.225-3
l	Payments	52.232-1
m	Discounts for Prompt Payment	52.232-8
n	Disputes	52.233-1
o	Changes - Fixed Price	52.243-1
p	Termination for Convenience of the Government (Fixed Price) (Short Form)	52.249-1

23. Indemnity Against Claims

- (a) Seller shall defend, indemnify, and hold harmless Buyer and Buyer's directors, officers, employees, and agents from any liability, claim of liability, expense, cause of action, loss, or damage whatsoever including attorney's fees arising out of or in any way connected with Seller's performance or failure to perform this purchase order or that of Seller's agents, employees, or subcontractors. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this purchase order. Seller shall also maintain such Public Liability, Property Damage, Employer's Liability, and Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this purchase order or if none are specified, such amount as will protect Seller (or its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes including the Occupational Safety and Health Act.
- (b) Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

24. Special Process Sources

When a special process, such as plating, welding, heat treating, etc., is required, the supplier or sub-tier supplier will use a special process which is approved by the buyer and/or the buyer's customer.

25. Verification of Quality and Right of Entry

In order to ensure that the purchased products or services meet all requirements specified in this purchase order, Buyer reserves the right to obtain from the supplier objective evidence of the quality of the product including but not limited to Certificates of Conformance, process control, statistical records and test reports. In addition, Buyer reserves the right to inspection and audit of supplier's premises, review of documentation and actual inspection of products upon receipt. The Buyer, his Customer and/or regulatory authority shall be afforded the right to have access to supplier's facilities during the performance of this purchase order in order to accomplish the above. Verification by Magnetika or its customer shall not absolve the supplier of the responsibility to provide acceptable product nor shall it preclude subsequent rejection if product is found not to meet specified requirements. The supplier shall notify the Buyer of any changes in product and/or process, management and manufacturing location and, where required, obtain approval from the Buyer.

26. Seller's Quality System

Seller shall maintain a documented quality system that ensures the conformance of all products provided to the Buyer under this purchase order, whether manufactured or processed by the Seller or from subcontractors or vendors.

27. Seller's Calibration System Requirements

Seller shall maintain a calibration system in compliance with ANSI/NCSL Z540-1, ISO 17025 or ISO 10012, AS9100 or as otherwise specified in the purchase order.

28. Additional Terms and Conditions Imposed by the U.S. Government

1. When the materials or products furnished are for use in connection with a Government contract or subcontract, in addition to the General Provisions, the following provisions shall apply, as required by the terms of the prime contract or by operation of law or regulation. In the event of a conflict between these FAR provisions and the General Provisions, the FAR provisions shall control.

2. Materials to be used in the performance of U.S. Government contracts may be inspected and tested at all reasonable times and places, either before, during, or after manufacture by Buyer or by the Government agency concerned, at Buyer's discretion. If inspection and test are made on the premises of Seller's subcontractor, Seller shall furnish without additional charge all reasonable facilities and assistance for the safe and convenient inspection and tests required by the inspectors in the performance of their duty.

3. The following clauses set forth in the FAR in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this purchase order.

a	Security Requirements (all)	52.204-2
b	New Material (all)	52.211-5
c	Notice of Priority Rating for National Defense Use (all)	52.211-14

d Integrity of Unit Prices (all)	52.215-26
e Utilization of Small, Small Disadvantaged and Women-owned Small Business Concerns (all)	52.219-8
f Notice to the Government of Labor Disputes (all)	52.222-1
g Disputes Concerning Labor Standards (all)	52.222-14
h Affirmative Action for Special Disabled and Vietnam Era Veterans (\$10,000)	52.222-35
i Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (\$10,000)	52.222-37
j Hazardous Material Identification and Material Safety Data (all)	52.223-3
k Ozone Depleting Substances (all)	52.223-11
l Privacy Act (all)	52.224-2
m Duty-Free Entry (all)	52.225-10
n Restrictions on Certain Foreign Purchases (all)	52.225-11
o Refund of Royalties (all)	52.227-9
p Filing of Patent Applications-Classified Subject Matter (all)	52.227-10
q Patent Rights-Retention by the Contractor (Short Form) (all)	52.227-11
r Patent Rights-Retention by the Contractor (Long Form) (all)	52.227-12
s Rights in Data - General (all)	52.227-14
t Commercial Computer Software-Restricted Rights (all)	52.227-19
u Insurance-Work on a Government Installation (all)	52.228-5
v Industrial Resources Developed Under Defense Production Act Title III (all)	52.234-1
w Accident Prevention (all)	52.236-13
x Stop-Work Order (all)	52.242-15
y Changes (all)	52.243-4
z Government Property (Fixed-Price Contracts) (all)	52.245-2
aa Special Tooling (all)	52.245-17
ab Special Test Equipment (all)	52.245-18
ac Preference for U.S.-- Flag Air Carriers (all)	52.247-63
ad Termination for Convenience of the Government (Fixed-Price) (all)	52.249-2
ae Default (Fixed-Price Supply and Service) (all)	52.249-8

ORDERS OVER \$100,000

a Restrictions on Subcontractor Sales to the Government	52.203-6
b Anti-Kickback Procedures (less para (c)(1))	52.203-7
c Limitation on Payments to Influence Certain Federal Transactions	52.203-12
d Audit and Records—Negotiation	52.215-2
e Contract Work Hours and Safety Standards Act-Overtime Compensation	52.222-4
f Clean Air and Water	52.223-2
g Toxic Chemical Release Reporting (less para (e))	52.223-14
h Authorization and Consent	52.227-1
i Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
j Subcontracts (Fixed-Price)	52.244-1
k Preference for Privately Owned U. S.--Flag Commercial Vessels	52.247-64
l Value Engineering	52.248-1

ORDERS OVER \$500,000

a Audit and Records -- Sealed Bidding	52.214-26
b Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding	52.214-28
c Subcontractor Cost or Pricing Data	52.215-12
d Subcontractor Cost or Pricing Data-Modifications	52.215-13
e Termination of Defined Benefit Pension Plans	52.215-15
f Reversion or Adjustment of Plans for Postretirement Benefits other than Pensions (PRB)	52.215-18
g Notification of Ownership Changes	52.215-19
h Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data	52.215-20
i Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications	52.215-21
j Small, Small Disadvantaged and Women-owned Small Business Subcontracting Plan	52.219-9
k Administration of Cost Accounting Standards	52.230-6

4. The offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

a. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$100,000)	52.203-11
b Certification Regarding Debarment, Suspension, or Proposed Debarment and Other Responsibility Matters (all)	52.209-5
c Certification of Non Segregated Facilities	52.222-21
d Previous Contracts and Compliance Reports (over \$10,000)	52.222-22
e Clean Air and Water Certification (over \$100,000)	52.223-1

5. Clauses incorporated in full text:

(1) EQUAL OPPORTUNITY REPORTING

Since this order includes FAR clause 52.222-26, Equal Opportunity, Seller is hereby notified of its responsibility to submit Annual Information Reports in accordance with instructions contained in the Employee Information Report EEO-1 Standard Form 100. These forms may be obtained from Joint Reporting Committee, 1800 G Street N.W., Washington DC 20506. If unable to obtain the forms, Seller shall request them from Buyer.

(2) AFFIRMATIVE ACTION COMPLIANCE PROGRAM

The rules and regulations of the Secretary of Labor, which Paragraph 6 of the Equal Opportunity clause incorporates, provide, among other things, that each Buyer and Seller shall require each Seller who has 50 or more employees and a subcontract of \$50,000 or more to develop a written affirmative action compliance program for each of its establishments (41 CFR 60-1.40). The Seller herein is required within 120 days from the commencement of this purchase order to develop and maintain such a program and to require its subcontractors who have 50 or more employees and a subcontract of \$50,000 or more to do the same. Such programs shall be developed and maintained in accordance with 41 CFR 60-1.40 and 60.2.

(3) RELEASE OF INFORMATION

Seller shall not publish any information developed under this purchase order nor distribute it nor make any news release about the subject matter of this purchase order or the prime contract without prior approval of the U.S. Government agency which issued the prime contract. Seller shall request the approval through the Buyer.

(4) TRUTH IN NEGOTIATIONS

Cost or Pricing Data (applicable only if certified cost or pricing data has been provided).

The clause entitled "Subcontractor Cost or Pricing Data" is a part of this purchase order if the Seller was required to furnish cost and pricing data and a Certification of Current Cost or Pricing Data for this purchase order. If it was not required to furnish such data and Certificate, the clause entitled "Subcontractor Cost or Pricing Data-Modification" is a part of this purchase order. Seller shall update its proposal and recertify its cost or pricing data whenever costs, factors, or prices change such that cost or pricing data previously furnished is no longer accurate, current, or complete.

A. Indemnification

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this purchase order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this purchase order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of Products for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:

- i. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- ii. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

B. Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this purchase order which involves increases and/or decreases in costs plus applicable profit in excess of \$500,000* and resulting from a change in the prime contract, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this purchase order, Seller shall obtain such data.

*Unless otherwise required by the Buyer.

C. Disputes - Government Contracts

- i. Any dispute arising under this purchase order which is not resolved by the provisions of Paragraph (ii) below will be resolved by the disputes clause contained in General Provisions (Form 10-4431).
 - ii. Notwithstanding any other provisions in this purchase order, any decision of the Contracting Officer under the prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to this purchase order—provided that:
 - a. the Buyer notifies with reasonable promptness the Seller of such decision and
 - b. the Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
 - c. if Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.
 2. Any decision upon such appeal, when final, shall be binding upon the Seller.
 3. The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.
 4. The Seller shall indemnify and save harmless from any and all liability of any kind incurred by or imputed to Buyer under Section 5, "Fraudulent Claims," of the Contract Disputes Act of 1978 (PL 95-563) if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.
 - iii. Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this purchase order, the Seller shall proceed diligently, as directed by Buyer, with the performance of this purchase order.
 - iv. Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.
 - v. As used in this clause, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978 (PL 95-563). When the materials or products furnished are for use in connection with a U. S. Government Department of Defense contract or subcontract, in addition to the General Provisions and the FAR provisions, the following provisions shall apply, as required by the terms of the prime contract or by operation of law or regulation. In the event of a conflict between these DFARS provisions and the General Provisions or the FAR provisions, the DFARS provisions shall control. The following clauses set forth in the DFARS in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this purchase order.
- The Seller, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

Title of Clause	DFARS	
a	Special Prohibition on Employment (Over \$100,000)	252.203-7001
b	Disclosure of Information (all)	252.204-7000
c	Provision of Information to Cooperative Agreement Holders (all)	252.205-7000
d	Intent to Furnish Precious Metals as Government-Furnished Material (all)	252.208-7000
e	Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate – Range Nuclear Forces (INF) Treaty (Over \$100,000)	252.209-7000
f	Acquisition Streamlining (Over \$1 million)	252.211-7000
g	Small, Small Disadvantaged, and Women-owned Small Business Subcontracting Plan (DoD Contracts) (Over \$500,000)	252.219-7003
h	Restrictions on Employment of Personnel (all)	252.222-7000
i	Hazard Warning Labels (all)	252.223-7001
j	Safety Precautions for Ammunition and Explosives (all)	252.223-7002
k	Change in Place of Performance - Ammunition and Explosives (all)	252.223-7003
l	Hazardous Waste Liability (all)	252.223-7005
m	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (all)	252.223-7006
n	Restriction on Acquisition of Certain Articles Containing Specialty Metals (all)	252.225-7009
o	Duty-Free Entry--Additional Provisions (all)	252.225-7010
p	Preference for Certain Domestic Commodities (all)	252.225-7012
q	Reserved	
r	Preferences for Domestic Hand or Measuring Tools (all)	252.225-7015
s	Restriction on Acquisition of Ball and Roller Bearings (all)	252.225-7016
t	Restriction on Acquisition of Foreign Anchor and Mooring Chain (all)	252.225-7019
u	Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber (all)	252.225-7022
v	Reporting of Contract Performance Outside the United States (Over \$100,000)	252.225-7026
w	Exclusionary Policies and Procedures of Foreign Governments (all)	252.225-7028
x	Secondary Arab Boycott of Israel (all)	252.225-7031
y	Waiver of United Kingdom Levies (Over \$1,000,000)	252.225-7032
z	Duty Free Entry - NAFTA Country End Products and Supplies (all)	252.225-7037
aa	Rights in Technical Data - Noncommercial Items(all)	252.227-7013
bb.	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (all)	252.227-7014
cc	Technical Data - Commercial Items (all)	252.227-7015
dd	Rights in Bid or Proposal Information (all)	252.227-7016
ee	Identification and Assertion of Use, Release, or Disclosure Restrictions (all)	252.227-7017
ff	Validation of Asserted Restrictions - Computer Software (all)	252.227-7019
gg	Deferred Delivery of Technical Data or Computer Software (all)	252.227-7026
hh	Deferred Ordering of Technical Data or Computer Software (all)	252.227-7027
ii	Technical Data--Withholding of Payment (all)	252.227-7030
jj	Patents - Subcontracts (all)	252.227-7034
kk	Validation of Restrictive Markings on Technical Data (all)	252.227-7037
ll	Ground and Flight Risk (all)	252.228-7001
mm	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (all)	252.228-7005
nn	Frequency Authorization (all)	252.235-7003
oo	Telecommunications Security Equipment, Devices, Techniques, and Services (all)	252.239-7016
pp	Transportation of Supplies by Sea (Over \$100,000)	252.247-7023
qq	Notification of Transportation of Supplies by Sea (all)	252.247-7024
rr	Notification of Anticipated Contract Termination or Reduction (\$100,000)	252.249-7002