

SUPPLEMENTAL FLOW DOWN CLAUSES IN SUPPORT OF FEDERAL PRIME CONTRACTS

A. INCORPORATION OF FAR AND DFAR CLAUSES:

Seller hereby acknowledges that Purchaser supplies products and services under U.S. Government contracts and subcontracts and as a result, Purchaser may be subject to various FAR provisions, Executive Orders, and agency regulations, which are hereby incorporated by reference. Seller will comply with all of the foregoing, as applicable, including any additional Federal, State and Local laws, rules and regulations with respect to procurement, manufacture, and delivery of the item(s) contained in an order.

B. GOVERNMENT SUBCONTRACT: This Contract is entered into by the Parties in support of U.S. Government - US Department of Defense contract. As used in the FAR, DLAD, and DFARS clauses referenced below and otherwise in this Contract:

1. "Contractor" means the Seller, acting as the immediate (first-tier) subcontractor to JGB Enterprises.
2. "Prime Contract" means the contract between JGB Enterprises and the U.S. Government or between JGB Enterprises and its immediate higher-tier contractor.
3. "Contract" means this subcontract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower tier subcontractors under this Contract.

C. NOTES:

5. Substitute JGB Enterprises for "Government" and "United States" as applicable throughout the clauses.
6. Substitute "JGB Enterprises Salesperson" or "JGB Enterprises Contract Administrator" for "Contracting Officer" and "ACO" and "Administrative Contracting Officer" throughout all clauses.
7. Insert "and JGB Enterprises" after ""Government" or "Contracting Officer" as appropriate throughout the clauses.
8. Insert "or JGB Enterprises" after "Government" throughout the clauses.
9. Communication or notification required under this clause, from or to the Contractor, and to or from the Contracting Officer shall be through JGB Enterprises.
10. "Contracting Officer" shall mean the U.S. Government Contracting Officer for JGB Enterprises's Government Prime Contract under which the contract is entered.
11. "Seller" shall include in each lower-tier subcontract the appropriate flowdown clauses as required by the FAR and DFARS.

THE CLAUSES LISTED BELOW ARE INCORPORATED BY REFERENCE WITH THE SAME FORCE AND EFFECT AS IF THEY WERE GIVEN IN FULL TEXT. A CLAUSE WITH AN AUTHORIZED DEVIATION IS SO MARKED AFTER THE DATE OF THE CLAUSE. (Also, the full text of clauses and provisions may be accessed electronically at the following websites):

FAR Clauses: <https://www.acquisition.gov/browse/index/far>

DFARS Clauses: <https://www.acquisition.gov/dfars>

Updated 7/21/2021

Notes:

(1) When both a FAR and DFARS clause apply the DFARS clause shall take precedence.

(2) Refer to the Prescribing Clause for additional information regarding applicability.

Regulation	Located at	Prescribed at	Title	Date	Applicability
FAR	52.202-1	2.201	Definitions	JUN 2020	ALL
FAR	52.203-19	3.909-3(b)	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017	ALL
FAR	52.204-21	4.1903	Basic Safeguarding of Covered Contractor Information Systems	JUN 2016	ALL
FAR	52.211-5	11.304	Material Requirements	AUG 2000	ALL
FAR	52.211-15	11.604(b)	Defense Priority and Allocation Requirements	APR 2008	ALL
FAR	52.222-1	22.103-5(a)	Notice to the Government of Labor Disputes	FEB 1997	ALL
FAR	52.222-21	22.810(a)(1)	Prohibition of Segregated Facilities	APR 2015	ALL
FAR	52.222-22	22.810(a)(2)	Previous Contracts and Compliance Reports	FEB 1999	ALL
FAR	52.222-26	22.810(e)	Equal Opportunity	SEP 2016	ALL
FAR	52.223-3	23.303(a)	Hazardous Material Identification & Material Safety Data	FEB 2021	ALL
FAR	52.223-6	23.505	Drug-Free Workplace	MAY 2001	ALL
FAR	52.223-11	23.804(a)(1)	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	JUN 2016	ALL
FAR	52.225-13	25.1103(a)	Restrictions on Certain Foreign Purchases	FEB 2021	ALL
FAR	52.227-1	27.201-2(a)(1)	Authorization and Consent	DEC 2007	ALL
FAR	52.227-2	27.201-2(b)	Notice and Assistance Regarding Patent and Copyright Infringement	JUN 2020	ALL
FAR	52.227-3	27.201-2(c)(1)	Patent Indemnity	JUN 2020	ALL
FAR	52.229-3	29.401-3	Federal, State, and Local Taxes	FEB 2013	ALL
FAR	52.243-1	43.205(a)(1)	Changes—Fixed Price	AUG 1987	ALL
FAR	52.244-6	44.403	Subcontracts for Commercial Items	NOV 2020	ALL
FAR	52.245-1	DFARS 245.107(1)(ii)	Government Property--Alternate I	APR 2012	ALL
FAR	52.246-11	46.311	Higher-Level Contract Quality Requirement	DEC 2014	ALL
FAR	52.246-15	46.315	Certificate of Conformance	APR 1984	ALL
FAR	52.247-63	47.405	Preference for U.S.-Flag Air Carriers	JUN 2003	ALL
FAR	52.247-64	47.507(a)(1)	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006	ALL
DFARS	252.203-7003	203.1004(a)	Agency Office of the Inspector General	AUG 2019	ALL
DFARS	252.204-7000	204.404-70(a)	Disclosure of Information	OCT 2016	ALL
DFARS	252.204-7008	204.7304(a)	Compliance with Safeguarding Covered Defense Information Controls	OCT 2016	ALL
DFARS	252.204-7009	204.7304(b)	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information	OCT 2016	ALL
DFARS	252.204-7012	204.7304(c)	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019	ALL
DFARS	252.211-7003	211.274-6(a)(1)	Item Unique Identification and Valuation	MAR 2016	ALL
DFARS	252.211-7007	211.274-6(b)	Reporting of Government-Furnished Property	AUG 2012	ALL
DFARS	252.223-7001	223.303	Hazard Warning Labels	DEC 1991	ALL
DFARS	252.223-7006	223.7106 and 223.7106(a)	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials--Basic	SEP 2014	ALL

Regulation Located at		Prescribed at	Title	Date	Applicability
DFARS	252.223-7008	223.7306	Prohibition of Hexavalent Chromium	JUN 2013	ALL
DFARS	252.225-7001	225.1101(2)(i) and (2)(ii)	Buy American and Balance of Payments Program--Basic	DEC 2017	ALL
DFARS	252.225-7002	225.1101(3)	Qualifying Country Sources as Subcontractors	DEC 2017	ALL
DFARS	252.225-7007	225.1103(4)	Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies	DEC 2018	ALL
DFARS	252.225-7012	225.7002-3(a)	Preference for Certain Domestic Commodities	DEC 2017	ALL
DFARS	252.225-7013	CD 2020-00019	Duty-Free Entry	APR 2020	ALL
DFARS	252.225-7016	225.7009-5	Restriction on Acquisition of Ball and Roller Bearings	JUN 2011	ALL
DFARS	252.225-7028	225.7307(b)	Exclusionary Policies and Practices of Foreign Governments	APR 2003	ALL
DFARS	252.225-7031	225.7605	Secondary Arab Boycott of Israel	JUN 2005	ALL
DFARS	252.227-7013	227.7103-6(a)	Rights in Technical Data--Noncommercial Items	FEB 2014	ALL
DFARS	252.227-7015	227.7102-4(a)(1)	Technical Data--Commercial Items	FEB 2014	ALL
DFARS	252.227-7016	227.7103-6(e)(1)	Rights in Bid or Proposal Information	JAN 2011	ALL
DFARS	252.227-7025	227.7103-6(c)	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	MAY 2013	ALL
DFARS	252.231-7000	231.100-70	Supplemental Cost Principles	DEC 1991	ALL
DFARS	252.246-7003	246.370(a)	Notification of Potential Safety Issues	JUN 2013	ALL
DFARS	252.246-7008	246.870-3(b)	Sources of Electronic Parts	MAY 2018	ALL
DFARS	252.247-7023	247.574(b) and (b)(1)	Transportation of Supplies by Sea--Basic	FEB 2019	ALL
DFARS	252.249-7002	249.7004	Notification of Anticipated Contract Termination or Reduction	JUN 2020	ALL
FAR	52.222-41	22.1006(a)	Service Contract Labor Standards	AUG 2018	>\$2,500
FAR	52.222-55	22.1906	Minimum Wages Under Executive Order 13658	NOV 2020	If 52.222-41 Is Applicable
FAR	52.222-62	22.2110	Paid Sick Leave Under Executive Order 13706	JAN 2017	If 52.222-41 Is Applicable
FAR	52.225-1	225.1101(2)(i)	Buy American Act--Supplies	MAY 2014	>\$10K
FAR	52.222-20	22.610	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000	JUN 2020	>\$15K
FAR	52.222-36	22.1408(a)	Equal Opportunity for Workers with Disabilities	JUN 2020	>\$15K
FAR	52.204-10	4.1403(a)	Reporting Executive Compensation and First-Tier Subcontract Awards	JUN 2020	>\$30K
FAR	52.209-6	9.409	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	JUN 2020	>\$35K
FAR	52.203-7	3.502-3	Anti-Kickback Procedures	MAY 2014	>\$150K
FAR	52.203-11	3.808(a)	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	SEP 2007	>\$150K
FAR	52.203-12	3.808(b)	Limitation on Payments to Influence Certain Federal Transactions	JUN 2020	>\$150K
FAR	52.222-4	22.305	Contract Work Hours and Safety Standards —Overtime Compensation	MAY 2018	>\$150K
FAR	52.222-35	22.1310(a)(1)	Equal Opportunity for Veterans	JUN 2020	>\$150K
DFARS	252.209-7004	209.409	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	MAY 2019	>\$150K
FAR	52.222-37	22.1310(b)	Employment Reports on Veterans	JUN 2020	>\$150K
FAR	52.222-54	22.1803	Employment Eligibility Verification	OCT 2015	>\$150K & 120 Days
DFARS	252.225-7021	225.1101(6) and (6)(i)	Trade Agreements--Basic	JUL 2020	>\$182K
FAR	52.249-1	49.502(a)(1)	Termination for Convenience of the Government (Fixed-Price) (Short Form)	APR 1984	<SAT

Regulation Located at	Prescribed at	Title	Date	Applicability	
FAR	52.222-20	22.610	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000	JUN 2020	>\$15K
FAR	52.222-36	22.1408(a)	Equal Opportunity for Workers with Disabilities	JUN 2020	>\$15K
FAR	52.249-2	49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price)	APR 2012	>SAT
FAR	52.249-8	49.504(a)(1)	Default (Fixed-Price Supply and Service)	APR 1984	>SAT
DFARS	252.203-7001	203.570-3	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DEC 2008	>SAT
DFARS	252.225-7008	225.7003-5(a)(1)	Restriction on Acquisition of Specialty Metals	MAR 2013	>SAT
DFARS	252.225-7009	225.7003-5(a)(2)	Restriction on Acquisition of Certain Articles Containing Specialty Metals	DEC 2019	>SAT
DFARS	252.225-7015	225.7002-3(b)	Restriction on Acquisition of Hand or Measuring Tools	JUN 2005	>SAT
DFARS	252.225-7052	225.7018-5	Restriction on the Acquisition of Certain Magnets and Tungsten	OCT 2020	>SAT
DFARS	252.226-7001	226.104	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	APR 2019	>\$500K
FAR	52.209-7	9.104-7(b)	Information Regarding Responsibility Matters	OCT 2018	>\$600K
FAR	52.219-9	19.708(b)(1)	Small Business Subcontracting Plan	MAR 2020	>\$750K
DFARS	252.219-7003	219.708(b)(1)(A) and (b)(1)(A)(1)	Small Business Subcontracting Plan (DoD Contracts)--Basic	DEC 2019	>\$750K
DFARS	252.222-7006	222.7405	Restrictions on the Use of Mandatory Arbitration Agreements	DEC 2010	>\$1M
FAR	52.215-10	15.408(b)	Price Reduction for Defective Certified Cost or Pricing Data	AUG 2011	>\$2M
FAR	52.215-11	15.408(c)	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	JUN 2020	>\$2M
FAR	52.215-12	15.408(d)(2)	Subcontractor Certified Cost or Pricing Data--Alternate I	AUG 2020	>\$2M
FAR	52.215-13	15.408(e)(1)	Subcontractor Certified Cost or Pricing Data—Modifications	JUN 2020	>\$2M
FAR	52.215-19	15.408(k)	Notification of Ownership Changes	OCT 1997	>\$2M
FAR	52.215-20	15.408(l)	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data	OCT 2010	>\$2M
FAR	52.215-21	15.408(m)	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications	JUN 2020	>\$2M
FAR	52.215-22	15.408(n)(1)	Limitations on Pass-Through Charges—Identification of Subcontract Effort	OCT 2009	>\$2M
FAR	52.215-23	15.408(n)(2)	Limitations on Pass-Through Charges	JUN 2020	>\$2M
DFARS	252.215-7010	215.408(5)(i) and (5)(i)(A)	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data--Basic	JUL 2019	>\$2M
DFARS	252.203-7004	203.1004(b)(2)(ii)	Display of Hotline Posters	AUG 2019	>\$6M
FAR	52.203-13	3.1004(a)	Contractor Code of Business Ethics and Conduct	JUN 2020	>\$6m & 120 Days
FAR	52.203-14	203.1004(b)(2)(ii)	Display of Hotline Poster(s)	OCT 2015	>\$6m & 120 Days

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision—

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) Representation. The Offeror represents that—

(1) It will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does, does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) Disclosures. (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

- (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);
- (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

- (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

- (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);
- (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

- (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

J.G.B. ENTERPRISES INC.
PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions The term "Purchaser" means J.G.B. Enterprises Inc. and the term "Seller" means the person, firm, or corporation from whom goods and/or services have been ordered.

2. Contract Any purchase order made by Purchaser includes and is expressly limited to these terms and conditions and all specifications, drawings, data and additional special terms and conditions contained herein, attached hereto or incorporated herein by reference ("Specifications"). Seller's acceptance of Purchaser's order becomes a binding contract when it is accepted by Seller. Either an acknowledgement by Seller or the commencement of performance by Seller shall constitute acceptance. Acceptance may only be on the exact terms and conditions set forth herein. No terms stated by Seller in accepting or acknowledging any order made by Purchaser shall be binding upon Purchaser unless accepted in writing by an authorized officer of Purchaser. If an order follows an offer by Seller setting forth Seller's conditions of sale, Purchaser's acceptance of Seller's offer is expressly conditioned on the Seller's assent to the additional or different conditions set forth herein. Prior to or in the absence of Seller's assent to Purchaser's terms and conditions, there shall be no contract between Seller and Purchaser.

3. Price Unless otherwise specified, the prices set forth in an order includes all applicable federal, state and local taxes and all shipping costs, duties and other charges.

4. Delivery Schedule: Shipment

a. TIME IS OF THE ESSENCE UNDER ANY ORDER MADE BY PURCHASER. Failure of Seller to make delivery of the Deliverables within the time specified on an order, or within any extension agreed to in writing by Purchaser, shall constitute a breach. In the event of a breach, Purchaser, may in addition to its other rights and remedies, reject any Deliverables and/or terminate its order in whole or in part, and purchase substitute goods and/or services elsewhere and charge Seller with any Loss incurred. "Loss" means every loss, liability, cost, damage and expense, including attorney's fees and court costs. The term "Deliverables" means all goods and services to be delivered or provided as specified in Purchaser's order.

b. A notice of shipment shall be sent to Purchaser at the time of shipment which shall state Purchaser's order number, the kind and amount of Deliverables and the route by which the shipment is being made. All Deliverables shall be suitably packed, marked, and shipped in accordance with any shipping instructions specified herein and prepared for shipment to secure the lowest transportation cost in compliance with standard carrier regulations. Seller shall be liable for any difference in freight charge arising from its failure to a) follow any shipping instructions specified herein or b) properly describe the shipment. Purchaser and Seller mutually agree to assist each other in obtaining documents and other information necessary for the prosecution of claims against carrier.

5. Quantity The quantity of Deliverables delivered shall not be greater than the amount specified in Purchaser's order. Purchaser shall have no obligation to accept or pay for any Deliverables delivered or provided by Seller in excess of that specified in an order. Purchaser may return excess quantities to Seller at Seller's expense.

6. Invoices and Payment All invoices must show Purchaser's purchase order number and the destination to which the Deliverables were delivered or shipped. If any sales, use, duty, excise or other similar tax or change is applicable to an order for which Purchaser has not furnished or agreed to furnish an exemption certificate, it must be separately itemized on the invoice. Payment shall be made per the terms established on an order. Payment is subject to any adjustment for shortage or rejection of supplied Deliverables.

7. Responsibility Unless otherwise provided in an order, Seller shall have title and bear risk of any loss or damage to any Deliverables purchased hereunder until delivered to Purchaser at the destination specified on the face of an order; or, if no such destination is specified, at Purchaser's principle place of business. Upon such receipt, title shall pass from Seller to Purchaser, provided that passing of such title shall not constitute acceptance of any Deliverables by Purchaser.

8. Inspection All Deliverables delivered hereunder are subject to Purchaser's inspection and acceptance within a reasonable time after arrival at the ultimate destination. If any Deliverables are found to be unsatisfactory, defective, or of inferior quality or workmanship, or fail to meet any specifications or any other requirements of an order, Purchaser may, in addition to its other rights and remedies, reject all or some of such Deliverables and require either the replacement or a refund if payment has already been made. Payment for any Deliverables hereunder shall not be construed to be an acceptance thereof. Without limiting the foregoing, Seller shall reimburse Purchaser for a) any amounts paid by Purchaser on account of the purchase price of any non-conforming Deliverables, including any costs incurred by Purchaser in connection with the return of such Deliverables.

9. Changes: Cancellation Purchaser may, at its option, upon written notice to Seller, terminate, reduce or make changes to any order prior to shipment. Upon such notice being given, Seller shall immediately stop performance and Purchaser's only obligation shall be to pay for any Deliverables shipped prior to the cancellation, irrespective of whether such Deliverables cover standard stock merchandise or Deliverables to be manufactured or fabricated to Purchaser's specifications or specifications prepared by Seller for Purchaser.

10. Standard Warranties In addition to and without prejudice to all other warranties, express or implied by law, Seller warrants that all Deliverables delivered or specified within an order (i) will conform to its description and any applicable specifications, (ii) will be free from all defects in material and

workmanship, and (iii) will be of good merchandise quality and fit for the purposes for which they are intended. The foregoing warranties are in addition to any additional standard warranty or service guarantee given by Seller to Purchaser. Seller further warrants to Purchaser that all Deliverables made to Purchaser when delivered shall be free and clear of all liens and encumbrances and the Seller has good and marketable title to same with authority to transfer good and marketable title to Purchaser free and clear from any third party liens or claims.

11. Patents, Trademarks and Copyrights In addition to the Standard Warranties set forth above, Seller warrants that the sale or use of the Deliverables will not infringe or contribute to the infringement of any patents, copyrights or trademarks in either the United States or foreign countries.

12. Default All warranties, express or implied, shall survive inspection, acceptance and payment. In the event of Seller's breach of any such warranty, in addition to other rights and remedies available to Purchaser, at law or in equity, Purchaser may return any Deliverables for a full refund, or direct Seller to promptly correct the breach by repairing or replacing the applicable items. Purchaser may also at its option and without prejudice to any of its other rights, cancel any undelivered Deliverables.

13. Indemnification Seller shall indemnify, defend, protect and hold harmless Purchaser from any and all actions, claims, costs, damages, expenses, fees (including attorney fees), investigations, liabilities, losses or suits arising out of or related to (A) any breach of any obligation, representation, warranty or covenant of Seller pursuant to any order by Purchaser, or (B) the Deliverables provided or to be provided pursuant to Purchaser's order, including but not limited to losses which (i) involve any actual or alleged injuries, death, property damage or any other damage of any kind resulting in whole or in part from defective or allegedly defective goods or services; (ii) involve any actual or alleged infringement of any intellectual property rights by reason of the use or sale of any Deliverables, (iii) involve any actual or alleged violation of any law, regulation, rule or ordinance relating to the use or sale of any Deliverables, or (iv) involve any claims of Seller, its agents, representative contractors or employees relating to any actual or alleged injuries, death, property damage or any other damages of any kind sustained in providing the Deliverables.

14. Liability Without limiting Section 13 above, in accepting an order, Seller agrees that he, or it, is an independent contractor for all intents and purposes and that he, or it, will indemnify and hold harmless Purchaser from any claims or damages arising from injury to Seller's employees from any cause whatsoever while in or about Buyer's plant or property, and Seller further agrees to carry all workmen's compensation necessary under Federal or State Statutes and also agrees that none of the individuals whose compensation for service is paid by the Seller shall be deemed to be employed by the Purchaser for the purpose of any tax or contribution levied by Federal or State Government and the Seller accepts exclusive liability for any payroll taxes or contributions imposed by Federal or State laws covering his or its agents or employees.

15. Limitation of Liability Purchaser shall not be liable by reason of termination, cancellation or breach of an order be liable to Seller for any compensation, reimbursement or damages, including in particular, but not limited to, any special, incidental, or consequential damages, either on account of present or prospective profit or sales or anticipated profit or sales, or on account of expenditures, investments or commitments.

16. Export and Import To the extent required by law, Purchaser and Seller shall cooperate with one another to submit to applicable customs authorities, all information and documentation necessary to comply with applicable customs and export and import requirements of each county into which goods will be exported and each country into which they will be imported.

17. Additional Terms Orders that are subject to a federal contract, subcontract or federally assisted construction agreement, shall be subject to Purchaser's Supplemental Purchase Order Terms and Conditions, a copy of which is incorporated herein by reference and shall be made available to Seller upon request.

18. Assignment Seller's rights and obligations hereunder may not be assigned without our prior written consent. Any purported assignment in violation of this section shall be void.

19. Non-Waiver Purchaser's failure at any time to require strict performance by Seller of any of the provisions herein shall not waive or diminish our right thereafter to demand strict compliance therewith or with any other provisions. Waivers of any default shall not waive any other default.

20. Applicable Law The rights and duties of the parties shall be governed by the laws of the State of New York. All disputes between Purchaser and Seller relating to the subject matter of an order or the Deliverables shall be resolved exclusively in the federal and state courts located in Onondaga County, New York and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such courts with respect thereto.

21. Entire Agreement The terms and conditions set forth herein represent the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior communications, representations or agreements, whether written or oral.