

NATIONAL STEEL AND SHIPBUILDING COMPANY
MILITARY SHIPBUILDING AND REPAIR PROGRAMS
PURCHASE ORDER
GENERAL TERMS AND CONDITIONS

1. **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 National Steel and Shipbuilding Company, aka General Dynamics NASSCO or NASSCO.
- (c) “**Contract**” means the Purchase Order between Buyer and Seller, including these General Terms and Conditions, the 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. This agreement may be in the form of a letter. If this circumstance is present, then the “Contract” shall consist of the Purchase Order, the agreement (whether in the form of a formal contract or letter contract), all of these General Terms and Conditions, the Special Terms and Conditions, the Specifications, and any other documents incorporated by reference by NASSCO.
- (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 (1) 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 (2) 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 the person(s) authorized to negotiate, approve, enter into and 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) “**Environmental Incident**” means the actual or potential release, spill, discharge or other loss of control of a hazardous substance or hazardous waste.
- (k) “**Facilities**” means NASSCO’s shipyard and other facilities used by Buyer or its affiliates located in the San Diego, California area or Baja California, Mexico or anywhere else designated by Buyer, including but not limited to, Government military bases, and customer shipyards.
- (l) “**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.
- (m) “**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.

- (n) “**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.
- (o) “**Government**” means the United States of America, acting through its authorized representative, the Department of the Navy.
- (p) “**Guaranty Period**” means 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.
- (q) “**Hull Structure**” means the shell, or outer casting, and internal structure below the main deck which provide both the floatation envelope and structural integrity of the Vessel in its normal operations.
- (r) “**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.
- (s) “**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.
- (t) “**NASSCO**” means National Steel and Shipbuilding Company.
- (u) “**OCM**” means Original Component Manufacturer.
- (v) “**OEM**” means Original Equipment Manufacturer.
- (w) “**Owner**” means the party (which may be the Government or a commercial entity) for which the Vessel(s) is being constructed or repaired.
- (x) “**PIR**” means Problem Identification Report.
- (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.
- (aa) “**Purchase Order**” means any agreement from Buyer for Contract Products or Contract Work that references these and any other 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

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

3. Assignment; Subcontracting or Delegation

Seller may not assign or delegate any of its rights, interest or performance in this Contract, in whole or in part, voluntarily or by operation of law, without obtaining Buyer's prior written consent. Buyer may assign all or a portion of its rights, duties and obligations under this Contract or this Contract itself in whole or in part to any third party, any Owner, or successor 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 Medical 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

- (a) 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.
- (b) Subject to the Acceptance, Integration, Amendment and Interpretation Section, only an authorized Procurement Representative of 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, in writing and shall so modify this Contract. If Buyer changes the Contract delivery date(s) such that Seller is required to work overtime, Buyer shall pay Seller an amount equal only to Seller's actual additional labor costs occasioned by such overtime.

(c) 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.

(d) Within twenty (20) days from the date of receipt of any written 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. 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. If the parties do not reach agreement as to such request, or an accord and satisfaction, then Seller shall submit a written REA to Buyer fully stating, with all forms of back-up data, (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.), as to why Seller is entitled to a price and/or time adjustment.

(e) 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, 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, THE REA IS TIME BARRED, AND FOREVER RELEASED OR WAIVED. THIS IS A CONTRACTUAL STATUTE OF LIMITATIONS FOR THE PARTIES.

(f) SELLER AGREES IT SHALL NOT FILE AN REA AFTER NASSCO HAS ISSUED A LETTER INDICATING THAT THE CONTRACT BETWEEN SELLER AND NASSCO IS CLOSED, FINISHED, COMPLETED, TERMINATED AND/OR HAS EXPIRED.

(g) 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.

(h) Seller shall certify any REA for Contract Work in support of a Government Prime Contract is made in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 *et seq.* Seller shall indemnify and hold Buyer harmless 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, and 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.

7. Compliance with Ethics

Seller shall comply with the General Dynamics *Standards of Business Ethics and Conduct*, which can be found at www.nassco.com under the heading "Supplier Information" and under the subheading "Business Ethics and Conduct," and the rules and regulations referenced therein, including but not limited to the U. S. Foreign Corrupt Practices Act, or alternatively, equivalent business ethics and conduct standards of Seller. In this respect, Seller has an ethical obligation and legal responsibility to warn NASSCO 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 harmless from any and all claims and liabilities resulting from any failure to so comply.

8. 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, the California Transparency in Supply Chains Act of 2010 (when this Act is applicable), 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 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.

9. Computation of Time

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.

10. Confidentiality and Third Party Intellectual Property Rights

Information furnished by Buyer and identified by Buyer as “NASSCO 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, all such information shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Absent contrary instructions, Seller shall destroy all NASSCO proprietary or confidential information within one (1) year after termination or completion of the Purchase Order or Contract, and provide a written acknowledgement to the Buyer of such destruction. Seller shall use its best efforts to maintain the confidentiality of this information. Seller may disclose such information only to 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 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) For Vessel construction, Seller acknowledges and agrees that the design of the Vessels represents the accumulated experience, knowledge and expertise of NASSCO, and such design, including any subsequent changes thereto, as contained in the Specifications, is the proprietary intellectual property of NASSCO and that it has substantial commercial value. Therefore, Buyer reserves all rights of ownership in the Specifications.

(b) For all Contract Work, Seller shall use only those portions of the Specifications as are required to perform hereunder. 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 designing, constructing, repairing or having designed, constructed, or repaired, another vessel of the same design as the Vessels. For purposes of this paragraph, “third parties” shall not include the ABS, US Coast Guard, or any other U.S. Regulatory Body or agency. At Buyer’s sole discretion, it may require Seller to execute a Non-Disclosure Agreement with additional or more stringent requirements.

(c) Any design or engineering data, in whatever form, relating to the Vessels that is produced by Seller under this Contract shall be considered a “work made for hire”. In this regard, Seller agrees to assign, and does hereby assign, all rights, 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. Further, whenever requested, Seller shall immediately execute a confirmatory assignment of any particular items of Contract Work in such form as may be satisfactory to Buyer, sign all lawful papers and otherwise perform all acts necessary or appropriate to enable Buyer to obtain and enforce all available legal protections for all such Contract Work. Notwithstanding anything else herein to the contrary, Buyer acknowledges and agrees that Seller may own certain know-how, trade secrets, plans, designs and construction information, processes, manufacturing techniques, discoveries, inventions and ideas, product specifications, machinery, drawings, photographs, computer source codes, equipment, devices, tools and other engineering or technical information that is in existence prior to the date of the Contract between the parties, whether or not protected by law, subject to pending applications or otherwise (“**Pre-Existing Intellectual Property**”). To the extent that such Pre-Existing Intellectual Property is: (i) incorporated into the Contract Work, and (ii) has expressly been identified to Buyer in writing prior to commencement of any services hereunder, then such Pre-Existing Intellectual Property shall remain the property of Seller. In such case, Seller grants to Buyer a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Pre-Existing Intellectual Property as may be necessary for Buyer to use the Contract Work for the purposes for which such Contract Work was designed and intended, including Buyer’s right to provide such Pre-Existing Intellectual Property as embedded in the final deliverables provided by Buyer to an Owner.

(d) For Contract Work provided in support of a Prime Contract with the Government, Seller grants the Government and Buyer the rights delineated in 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)). Applicable Government procurement regulations incorporated in the Special Terms and Conditions, if referenced on the Purchase Order, shall take precedence over any conflicting terms of this Section (Confidentiality and Third Party Intellectual Property Rights) to the extent that such regulations so require. Buyer’s review of any designs submitted by Seller shall not relieve or in any way diminish Seller’s obligations and responsibilities under this Contract. If Buyer identifies any non-conformance with Contract requirements in any of Seller’s designs, 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.

(e) 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 less than or even 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.

(f) Notwithstanding any obligations of confidentiality set forth in the Contract, including this Section, during construction of the Vessel, Seller understands and agrees that the ABS and any other Regulatory Body are authorized to discuss and disclose to NASSCO all submitted drawings, specifications, correspondence, and information of Seller.

11. Control Over Weekend and Holiday Performance

Buyer reserves the right to declare by timely 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”.

12. 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) if Seller 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.

(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 (1) completed Contract Products or Contract Work, (2) partially completed Contract Products or Contract Work, and (3) 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/Back-charges 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.

13. Deliveries of Contract Products

(a) Deliveries are to be made both in quantities and dates specified in the Contract.

(b) For Contract Products that are delivered more than thirty (30) days in advance of the specified delivery date without Buyer’s prior written consent, Buyer may refuse delivery or return to Seller at Seller’s expense. Further, the Risk of Loss for goods that are delivered more than thirty (30) days in advance of delivery date, or in amounts that are not in compliance with the Contract Products, shall remain entirely with Seller.

(c) 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.

(d) Seller is advised that NASSCO 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 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.

14. 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.

(b) The parties will attempt in good faith to settle any dispute arising under or related to the Contract. The parties will attempt to resolve the dispute at the lowest practicable level for a reasonable period of time, but in no event longer than six (6) months. If the representatives cannot resolve the dispute, they will refer the matter to appropriate levels of their respective management teams.

(c) Any dispute arising solely in connection with or arising out of this Contract not resolved in accordance with paragraph (b), above, and after the parties have exhausted the informal dispute resolution process, shall be finally settled by litigation in the United States District Court for the Southern District of California. THE PARTIES HEREBY CONSENT TO SUCH EXCLUSIVE JURISDICTION AND VENUE FOR ANY DISPUTES. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO A TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. THE PARTIES FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY. The parties may also agree to arbitrate if they so desire. In resolving any dispute under this Contract, each party shall bear its own attorneys' fees and costs and expenses, without regard to any law or statute to the contrary.

(d) Seller shall bring any and all disputes under or related to the Contract within two (2) years after the cause of action for such dispute arises. Notwithstanding any provisions herein to the contrary, if the decision under a Prime Contract is made by a Contracting Officer and such decision is also related to this Contract, and is binding on Buyer, then it shall also be deemed to be binding on Seller insofar as it relates to the Contract.

(e) Any dispute arising under or related to the Contract, which Buyer could include in a claim or other demand under the disputes provisions of the Prime Contract, shall be resolved in accordance with the following.

1. Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within sixty (60) days after the claim accrues;
2. Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and
3. Seller shall pay its proportional costs in pursuing the claim.
4. If Seller fails to provide Buyer with a written claim for any dispute within the timeframe specified herein, Seller is deemed to have waived the claim.
5. Buyer's entire liability to Seller with respect to any matter prosecuted under the disputes provisions in the Prime Contract shall be limited to the recovery obtained against the Government for Seller's claims, exclusive of Buyer's related markups.
6. Buyer may, upon Seller's request and in Buyer's sole discretion, submit the claim or request for equitable adjustment to the Contracting Officer. If Seller is affected by the resulting decision or Buyer elects to appeal, Seller shall pay Seller's proportion of the appeal costs to Buyer.

7. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within ninety (90) days. If Seller submits a timely request to Buyer to appeal such decision, Buyer will file and sponsor Seller's appeal at Seller's sole cost, if Buyer may do so in good faith.
8. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this Contract.
9. The choice of law specified in the Contract will not apply to disputes or appeals prosecuted under the Prime Contract. Pending final resolution of any decision, appeal or judgment of any proceedings related to the Contract, Seller shall proceed diligently with the performance of this Contract unless otherwise directed by Buyer in writing.

15. Environmental, if Seller Operates Within the Facilities

- (a) Seller shall comply with Buyer's written environmental policies, procedures and requirements, and with all United States, state and local environmental laws and regulations, including without limitation, those regarding the use of any hazardous substances, and shall be responsible for all hazardous waste (both as defined by United States and California law) generated by Seller's employees and subcontractors during the performance of this Contract. 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.
- (b) Seller's environmental management system 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.
- (c) If Seller causes, to any extent, an 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. Seller agrees to pay Buyer for Buyer's response to each such Environmental Incident, including its 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.

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

- (a) Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States pertaining to the export of any hardware, software, technical data, technology or defense service, provided by, through or with the cooperation of the Buyer in the performance of this Purchase Order, whether in the United States or abroad. Applicable United States export control laws and regulations include but are not limited to the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794 and 22 C.F.R. §§120-130 International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State (available at <http://pmdc.state.gov/>); the Export Administration Act, 50 U.S.C. App. 2401-2420 and 15 C.F.R. §§ 730-774 Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce (available at <http://www.bis.doc.gov/>); and the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") Regulations, 31 C.F.R. Part 500-598 (available at <http://www.treas.gov/offices/enforcement/ofac/>). All aforementioned laws and regulations are herein referred to as "US Export Control Laws".
- (b) If Seller is in the business of manufacturing, exporting and/or brokering U.S. Munitions List ("USML")

items, Seller represents that it maintains registration with the U.S. Department of State, Directorate of Defense Trade Controls as may be required by ITAR Parts 122.1 and/or 129.3, respectively.

(c) Seller shall obtain, and provide copies to Buyer of, all required export licenses, agreements or applicable license exemptions or exceptions required for Seller to lawfully export defense articles, defense services, technical data, technology or services to any foreign person or entity, including without limitation all required export licenses or agreements to use foreign classification or survey providers. Seller shall notify any such provider three (3) days in advance of each required classification or survey service, in the performance of the Contract.

(d) Seller shall include Buyer and the foreign person or entity 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.

(e) Seller agrees that neither it nor any of its subsidiaries, affiliates or subcontractors will directly or indirectly export, re-export, transfer, or release, or cause to be exported or re-exported, any hardware, software, technical data, technology or services to any destination or entity that is embargoed, prohibited, or otherwise sanctioned under U.S. Export Control Laws.

(f) Seller agrees that neither it nor any of its subsidiaries, affiliates or subcontractors will directly or indirectly export, re-export, transfer, disclose or otherwise provide Buyer's technical data that is controlled by U.S. Export Control Laws to any foreign persons or entity unless Seller first receives advance, written authorization from Buyer.

(g) Seller may not subcontract a scope of work involving transfer of hardware, software, technical data, technology or services unless and until the export compliance provisions of this Section (Export Control Compliance and Cooperation Applicable when Buyer is Procuring from Seller in support of Prime Contracts with the Government) have been provided in writing to the subcontractor(s).

(h) Unless the Purchase Order is for goods to be supplied on a "build to print" basis by Seller, Seller shall provide Buyer with either (i) the USML category of such hardware, software, technical data and/or technology that is controlled by the ITAR, or (ii) the Export Control Classification Number ("ECCN") of such hardware, software, technical data and/or technology that is subject to, or controlled by the EAR, including those items designated as "EAR99".

(i) Upon completion of its performance under the Purchase Order, Seller and its subcontractors shall destroy or return to Buyer all technical data.

(j) Seller shall notify Buyer immediately if Seller is denied a license, or has a license revoked, or other adverse action related to export compliance, including being 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.

(k) 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.

(l) 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-licensee, 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.

17. Force Majeure

Either party shall provide notice to the other party of a Force Majeure event no later than fifteen (15) days after such first party has reason to know of the existence of the Force Majeure event. This notice shall include the estimated impact on the performance or delivery schedule. No extension of Seller's delivery or performance schedule shall be considered unless Buyer has received this notice. Seller shall likewise

immediately provide notice to Buyer when the Force Majeure event has ended, and such notice shall include a statement of the amount of delay in the performance or delivery schedule caused by such event.

18. Furnished Property

(a) 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.

(b) All property used by Seller in connection with its performance under the Agreement which is owned, furnished, or consigned by Buyer, or is charged to or paid for by Buyer, including, but not limited to, materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings, specifications and other technical documentation (“**Buyer Property**”) shall be and remain the property of Buyer. Unless already so marked by Buyer, Seller shall identify and conspicuously mark all Buyer Property as belonging to Buyer and, upon request, shall furnish Buyer with a list of all Buyer Property being held by Seller. All Buyer Property shall be used only for Seller’s performance under the Agreement and held at Seller’s sole risk and insured at Seller’s sole risk and insured at Seller’s sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Buyer Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller’s premises for such purpose. Seller shall return such Buyer Property to Buyer upon Buyer’s demand, and return expenses paid as specified on the face of the Purchase Order.

(c) In the event Buyer provides Government Furnished Property (“**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.

19. 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.

20. 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 twelve (12) months for Contract Work related to new construction or 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) In addition, Seller shall proactively repair or replace without direction from Buyer, all material and equipment in other ships of the same class except those whose Guaranty period has expired, that have the same weakness, deficiency, failure, break down, or deterioration in material or workmanship.

(c) Seller’s Guaranty, and Buyer’s Guaranty rights against Seller, shall be separately assignable to the Government or Owner, as the case may be.

21. Indemnity

Seller shall defend, indemnify, save and hold Buyer, its parent company, affiliated companies, directors, officers, agents and employees, free and harmless from and against all claims, demands, causes of action, damages and liabilities of any nature, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys’ fees) for (i) death or injury to any person or persons (including, but not limited to, agents and employees of Seller and its subcontractors 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 Sellers' subcontractors or suppliers, and excluding only claims and liabilities based on Buyer's sole negligence or willful misconduct. 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.

22. 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. 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 and the eventual Owner of the Vessels 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 had been done by Seller; (iii) Seller may not subcontract any Hull Structure 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.

23. 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, services, 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. After notification and Buyer's acceptance of specific scheduled inspections or tests, if Seller is not ready to perform the inspections or tests at the designated time(s), then Seller shall reimburse Buyer for its costs incurred for labor and travel to attend the inspections or tests.

(b) The Government may, from time to time, designate certain Contract Work for Government Source Inspection ("GSI"). The Government shall issue a Letter of Delegation to the supplier specifying its inspection criteria and points of contact. 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 Work 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) Seller shall provide and maintain an inspection system and documentation in accordance with Seller's mandatory document control and records retention procedures (i.e., records of all inspection work by Seller shall be kept complete and available to the designated Quality Assurance Representative ("QAR") during the performance of Contract Work).

(f) Final acceptance or rejection of Contract Work shall be made as promptly as practicable, but no later than sixty (60) days after Delivery of Contract Work to the delivery point or upon completion of performance and inspection of the Contract Work as applicable. 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.

(g) 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.

(h) The Contract Work shall be accepted when, upon final inspection and testing, it is found to conform to this Contract. If at 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.

(i) 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.

(j) 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.

24. 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 with coverage to include broad form property damage, personal injury, premises, completed operations, and products and contractual liability for the liability assumed under this Contract and independent contractors; and with a minimum bodily injury and property damage combined single limit of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) When Seller, its employees, agents and subcontractors (including delivery persons) who enter any facility owned, leased or operated by Buyer, then Seller shall maintain:

(i) Commercial Automobile Liability insurance with coverage to include owned, hired and non-owned vehicles; with a minimum bodily injury and property damage combined single limit of \$2,000,000 per occurrence.

(ii) Workers' Compensation and Longshore and Harbor Workers' Compensation Act insurance with minimum limits of liability conforming to the statutory requirements of the state where the work is to be performed and the United States of America, respectively.

(iii) Employer's Liability with minimum limits of \$1,000,000.

(c) If Seller's employees, subcontractors or suppliers are assigned aboard a Vessel for any reason, Seller shall maintain Jones Act coverage with minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

(d) If Seller's employees, subcontractors or suppliers are required under this Contract to perform any work related to any U.S. Government contract outside of the United States, Seller shall maintain Defense Base Act coverage with minimum limits conforming to the statutory requirements of the United States.

(e) Each such policy shall be underwritten by an insurance company with minimum A.M. Best ratings of "A-, VII" or equivalent and shall provide that it is primary insurance to and noncontributing with any other insurance carried by Buyer. The policies referred to above in paragraphs (a) and (b)(i) shall name Buyer as an "additional insured". The policies referred to above in paragraphs (b)(ii), (b)(iii), (c) and (d) shall contain a waiver of subrogation in favor of Buyer.

(f) Certificates evidencing Seller's compliance with these insurance requirements shall be delivered to Buyer upon issuance of the Contract and renewals thereof sent to Buyer upon issuance of the Contract and renewals thereof sent to Buyer upon expiration of the respective policy terms. Seller, its insurance broker or insurer shall be obligated to immediately notify Buyer in writing of any cancellation of required coverage or any material change therein.

(g) Notices and certificates regarding insurance policies shall be provided in writing to National Steel and Shipbuilding Company, Attention: Risk Manager, P.O. Box 85278, San Diego CA 92186-5278.

(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.

25. 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 ninety (90) days after completion of the Contract Work. Invoices received later than ninety (90) days after completion of the Contract Work are rejected and void and Seller hereby waives the right to payment of these invoices.

(d) The following terms apply in the event that this Contract is in furtherance of a cost reimbursement contract. 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 ten (10) 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.

26. 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. The standard progress payment releases and waivers are in conformance with California's Civil Code Section 3262, to the extent applicable to the type of work being performed, and samples can be found at www.nassco.com, under the heading "Supplier Information and Transportation Guide" and the sub-heading "Supplier Releases." 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. Seller's waiver and release will be in substantially the same form as required by California Civil Code Section 3262."

(b) Buyer shall have the right to withhold any payment until Seller furnishes 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.

27. 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 OF, KNEW OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES, TO BUYER'S BENEFIT, IF BUYER FURNISHES GOODS OR SERVICES TO THE SELLER, SELLER AGREES TO AND DOES WAIVE ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY FOR FITNESS OR FOR A PARTICULAR PURPOSE THAT MAY FLOW TO IT FROM BUYER.

28. New Materials and Authorized Sources

- (a) Seller represents and warrants to Buyer and Buyer's customers 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 provide 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 plans to purchase 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.

29. 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.

30. 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 the person and at the address as indicated on face of the Purchase Order, and To Buyer: National Steel and Shipbuilding Company, 2798 East Harbor Drive, San Diego, CA 92113, or P.O. Box 85278, San Diego, California 92186-5278, Attn: Buyer's Representative (as specified on the face of the Purchase Order), Telephone Number (619) 544-3400 and Facsimile Number: (619) 544-3499 for new Vessels or (619) 544-8786 for repair services for existing Vessels, or addressed to either party at such other address(es) as such party may later specify in writing.

31. 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.

32. Organizational Conflict of Interest

Seller represents that its execution and performance of this Contract does not conflict with or breach any contractual, fiduciary or other duty or obligation to which Seller is bound. Seller further represents that it will not accept work during the term of this Contract or any and all of the Purchase Orders issued hereunder which would create an Organizational Conflict of Interest (“OCI”) as such term is defined in Federal Acquisition Regulation (“FAR”) Subpart 9.5. Further, Seller agrees that it shall not perform any work outside of this Contract, or any Purchase Order issued hereunder, that would create an appearance of an OCI to a reasonable business person. Seller shall immediately provide notice to Buyer in the event that it discovers any potential, actual or apparent personal or business OCI related to or arising out of this Contract or any and all of the Purchase Orders issued hereunder.

33. 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 protection during the shipbuilding process and after final installation.
- (c) The Purchase Order number, Purchase Order line item number and NASSCO material code number must be plainly marked on all packages, bills of lading and invoices.
- (d) Packing lists shall accompany each shipment listing all material included in the shipment. Buyer’s count or weight shall be final and conclusive for shipments not accompanied by packing lists.
- (e) If shipment is from outside the U.S., pallets must be pest free, and preferably use heat (not chemically) treated bark free wood.
- (f) If Seller ships via ocean in sealed LCL (Less-Than Container Load), FCL (Full Container Load), or break-bulk shipments arriving at U.S. seaports from non-U.S. countries, then Seller must provide NASSCO Logistics Department with U.S. Customs 10+2 importation data using the Importer Security Filing-Form 10 in accordance with the instructions available on the internet at:

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

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

34. 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.

35. 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.

36. Quality; Problem Identification Reports

(a) Seller shall provide and maintain a commercially reasonable quality control system (i.e., the current version of ISO 9001) 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 occurrences 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 of the cause of the failure, a discussion of correction of any defects, process changes that will be implemented to prevent recurrence, and a schedule of performance. Seller shall provide a responsive reply in writing to any Corrective Action Request within ten (10) days of receipt of the events leading to the failure.

(d) Problem Identification Reports (“**PIR**”) shall be used by Seller to alert Buyer to actual or potential problems and to establish an early dialogue between Seller and Buyer with regard thereto. As used in this Section, a problem is a fact or circumstance of which Seller is aware of that does, will or may (i) have an impact on the delivery schedule, completion or performance or cost (increase or decrease), or (ii) require a modification to the Purchase Order. Seller shall provide Buyer with a written report of each problem within ten (10) days after Seller identifies such problem. Each PIR shall be dated, reference the Purchase Order, and describe the nature of the problem, the date that the problem arose, and the anticipated effects of the problem including but not limited to, delivery, cost of performance, and Seller’s recommended resolution of the problem. The parties expressly agree that the PIR shall not constitute a modification or amendment of the Purchase Order or Contract. In no event shall any PIR modify price or schedule for any Purchase Order or Contract.

37. Rights for Audit Applicable to Contract Work in support of Government Prime Contracts

For Contract Work performed in support of a Government Prime Contract, Seller agrees to permit Buyer’s authorized representatives or the U.S. Government personnel, to interview Seller’s personnel, review Seller’s accounting and cost control systems, and inspect books, records, accounts, and other documents and make copies of information, relating solely to the Contract so as to enable Buyer to perform cost analysis in accordance with the FAR/DFARS when applicable. Such access shall occur at reasonable times and with reasonable notice, during the performance of the Contract.

38. Safety, if Seller Operates Within the Facilities

(a) The safe conduct of all persons employed by Seller or its subcontractors or 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, 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 safety policies and procedures available at Buyer's Safety Department. Seller is solely responsible for informing itself of said laws, regulations, policies and procedures, and training its employees.

(b) Unless otherwise addressed in the Contract, during on-going operations at the Facilities, and in conjunction with Buyer's rights herein, Buyer shall have the right to reasonably require that Seller 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 safety concerns.

(c) Buyer's safety policies and procedures are available at Buyer's Safety Department. Any failure by Seller or any of its subcontractors or suppliers to comply with any such safety policies, procedures, laws or regulations shall constitute a default. Under no circumstances shall compliance with Buyer's safety policies and procedures, alone, be considered complete satisfaction of the requirements of this Section.

(d) Seller's occupational health and safety management system shall incorporate measures which demonstrate that its employees are competent to perform their tasks safely and ensure that hazards to health and safety have been eliminated, where possible, or are being controlled through formal planning methods and procedures. Further, NASSCO meetings concerning any aspect of subcontractor safety must be attended by at least one of Seller's managerial/safety staff members for the purpose of ensuring that proper transmission and direction of new safety rules, or current rules, are being communicated, understood, and followed by all of Seller's employees when they are in the Facilities.

(e) Seller shall complete the following prior to commencement of the Contract Work: (i) Provide to Buyer's Safety Department the name, telephone number and title or position of the Seller's Safety Representative, (ii) Seller's Safety Representative, together with equivalent representatives of Seller's subcontractors or suppliers who are expected to perform at the Facilities, shall meet with Buyer's Safety Manager or designee to review applicable safety policies and procedures, (iii) Provide to Buyer's Safety Department a copy of Seller's written Injury and Illness Prevention Program, (iv) Submit for approval by Buyer's Safety Department a copy of all Material Safety Data Sheets ("MSDS") for all chemical compounds that Seller anticipates using in performing Contract Work at the Facilities, and (v) 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, environmental and fire protection.

(f) Seller represents and warrants that all equipment used by Seller to perform any Contract Work at the Facilities conforms to all federal, state, and local safety, health, and fire protection standards.

(g) Seller represents and warrants that Seller's employees, subcontractors' and suppliers' employees performing Contract Work at the Facilities are properly trained in all Federal, State, and local health, safety and fire protection laws and regulations and Buyer's safety policies and procedures, applicable to the Contract Work.

(h) Seller shall report all recordable occupational injuries or illnesses occurring at the Facilities during performance of the Contract Work in accordance with the following procedures: (i) Seller shall make an initial report to Buyer's Safety 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 (619) 544-8444 or by personal visit to Buyer's Safety 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 Form for Supervisor's Injury Analysis available at Buyer's Safety Department or any other form which includes all necessary information. This report shall be delivered to Buyer's Safety Department.

(i) Seller shall immediately notify Buyer's Safety Department, in writing, upon receiving notice of any inspection from either United States OSHA or California 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 Cal OSHA.

(j) If, in Buyer's sole opinion, Seller fails to comply with this Safety Section, Buyer may without prejudice to any other legal or contractual rights of Buyer, issue an order stopping all or part of the Contract

Work. Seller shall have no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.

(k) To the extent required of Buyer's own employees, Personal Protective Equipment to include but not limited to hard hats, safety shoes, protective eyewear, and hearing protection is 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.

39. 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.

(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.

40. Screening: Background Check, Credit History Check and Drug Screen

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.

These individuals must meet the minimum screening requirements below before they are allowed to have unescorted access to the Facilities or access to the Buyer's computer networks, **UNLESS** they meet at least one of the following criteria:

- (a) production workers including those individuals that supervise production workers in New Construction and/or Repair provided they will not require access to any of the Buyer's computer networks;
- (b) individuals holding a TWIC (Transportation Worker Identification Credential) card; or
- (c) individuals holding a DoD clearance at or above the SECRET level.

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) Name (including all aliases, nicknames and former names) and all addresses for past 7 years
- (c) Employment history - Employers and dates of employment (7 years)

- (d) Job titles (7 years)
- (e) Reason for termination of prior employment (if disclosed) (7 years)
- (f) Education/Training—all pertinent degrees, professional licenses, certifications, etc.
- (g) Criminal history—prior criminal convictions and guilty pleas (federal and state) (7 years), excluding juvenile offenses and offenses sealed or expunged by law
- (h) Citizenship status
- (i) Past revocation, denial or suspension of a Government security clearance
- (j) References (if any)

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 his/her service at the Facilities is interrupted for a period of ninety (90) days or longer.

41. 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 Facilities are mandatory. Buyer's security policies and procedures are located at Buyer's website at www.nassco.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.

42. 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.

43. Setoffs/Back-charges

- (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 corrective action in a reasonable time to support NASSCO'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 and 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 to Seller under this Contract or any other contract between the parties for all costs, expenses, damages, liabilities associated with Seller's non-compliance with its obligation under this Contract. The parties expressly agree that such costs, expenses, damages and liabilities shall include, without limitation, any reduction in the award fee on Buyer's Prime Contract, and any impacts to cost or schedule of other subcontractors under Buyer's Prime Contract. For avoidance of doubt, 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 provided that such Contract Work does not otherwise impact performance of Buyer's Prime Contract, or result in a reduction to Buyer's award fee. There shall be no interest due to Seller on any monies withheld by Buyer.

44. 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. NASSCO prefers the expiration date to be marked in MM/DD/YYYY format but will accept manufacture date and other date formats. Each carton/box shall contain Contract Products with only one expiration date. Seller shall ship such Contract Products timed to arrive on NASSCO's receiving docks with no less than 85% of the specified shelf life remaining unless otherwise approved in writing by Buyer.

45. Survival

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

Acceptance, Integration, Amendment and Interpretation

Buyer's Medical Treatment if Seller operates within the Facilities

Compliance with Ethics

Compliance with Laws

Confidentiality and Third Party Intellectual Property Rights

Disputes

Environmental; if Seller Operates within the Facilities

Export Control Compliance and Cooperation Applicable when Buyer is procuring from Seller in support of Prime Contracts with the Government

Guaranty in support of Prime Contracts

Indemnity

Independent Contractor

Insurance

No Advertising

No Hire

Non-Waiver

Order of Precedence

Payment, Taxes and Duties

Setoff/Back-charges

Survival

46. 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.

47. 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 in writing upon a revised completion date. Time is of the essence for performance specified in 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.

48. 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.

49. 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.