

*TERMS AND CONDITIONS OF PURCHASE ORDERS -DoD (Applicable for orders issued under Department of Defense (DoD) Contracts*

Acceptance of this order is limited to the terms and conditions stated herein. Any additions, deletions, or differences in the terms proposed by Seller are objected to and hereby rejected unless Buyer otherwise agrees in writing.

Section A: Definitions

A-1 The following definitions apply unless otherwise specifically stated:

- "Buyer or Purchaser" - Maersk Line, Limited
- "Seller" and "Subcontractor" - The legal entity which contracts with the Buyer.
- "Prime Contract" - The Government contract under which this order is issued.

Section B: Applicable Clauses

B-1 Packing, Marking, and Shipping. Seller shall pack, mark, and ship all goods and supplies as to be in compliance with transportation regulations and good commercial practice and shall secure the most cost effective service and rates consistent therewith. No separate or additional charge is payable by buyer for crating, storage, dunnage or drayage, boxing, or bundling unless specifically stated in the order.

B-2 Changes. The buyer may, by written order, make such changes in the specifications for the work required as are within the general scope of this contract. If any such change causes an increase or decrease in the cost of, or time required for performance of, an equitable adjustment shall be made in the price or time of performance. The seller must assert its right to an equitable adjustment within 20 days from the date of a written change order from the buyer.

B-3 Termination for Convenience. The order may be terminated for the Buyer's convenience, without liability to the buyer for any uncompleted work by the seller.

B-4 Default. If the subcontractor fails to perform the Work within the time specified in the contract or any extension thereof or otherwise fails to perform the contract in accordance with the terms, or so fails to make progress as to endanger the performance of this order, the buyer may terminate

the contract in whole or in part by means of a written notice of default. If the buyer terminates the work in whole or in part as provided by this paragraph, the buyer may arrange for the completion of the work so terminated, and the seller shall be responsible to cover costs incurred therein, in addition to Buyer's other rights and remedies at law or in equity.

B-5 Warranty of Supplies and Services. In the event that any work done or material furnished by the seller on or for the vessel or the equipment thereof shall, after completion of all work and within 180 days thereafter, prove defective, deficient, or not in conformity with the specifications, such defects or deficiencies shall be corrected and repaired by the seller or at his expense to the satisfaction of the buyer.

B-6 Disputes. Any disputes arising under or related to this order which cannot be settled via mutual agreement shall be submitted to the United States District Court for the Eastern District of Virginia, Norfolk Division, or the Circuit Court for the City of Norfolk, Virginia. The buyer and seller consent to venue and jurisdiction in either of these Courts. To the extent that the federal common law of Government contracts is not dispositive, the laws of The Commonwealth of Virginia, with the exception of its conflict of law's provisions, apply. No litigation which concerns a dispute arising under this order may be commenced by the seller more than one year after the last delivery or furnishing of materials and services by the seller. The seller agrees, pending resolution of any dispute, to proceed diligently with performance, including any change orders.

Concerning any claim that arises between the seller and the buyer for which the Government may be liable, the seller agrees that it will present its claim promptly to the buyer for submission to the Government under the Contract Disputes Act of 1978 or the disputes clause of the principle contract. The buyer agrees that it will cooperate with the seller in presenting such claim and will pay to the seller any amounts recovered for the claim. However, the

buyer is not required to allow any claim to proceed in the buyer's name under the buyer's sponsorship. The buyer will have no obligation to sponsor any claim that he does not believe in good faith meets all requirements pertaining to submission of claims to the Government. The seller agrees that this remedy shall be the seller's sole remedy in lieu of any claim directly against the buyer.

B-7 Priority Rating. Delivery is to be made according to the schedule. This is a rated order under Government prime contract, with a priority rating DO-A3. This rated order is certified for national defense use and you are required to follow all provisions of the Defense Priorities and Allocation System Regulation (15 CFR 700).

B-8 Payment. Payment terms are net 30, unless otherwise specified. No invoices shall be paid unless the supplies or services have been inspected and accepted by the buyer. All invoices must be an original invoice and cite the purchase order number.

B-9 Waiver of Maritime Liens. If work is done on vessels owned or operated by Maersk Line, Limited, neither the seller nor any of its subcontractors shall be entitled to a maritime lien upon the vessel. The subcontractor agrees that nothing in or contemplated by this contract creates or shall be construed to create any right to assert a maritime lien on the vessel or to bring action under the Public Vessels Act, 46 U.S.C. §§ 781-790, or the Suits in Admiralty Act, 46 U.S.C. § 742.

The subcontractor further agrees that this contract between buyer and subcontractor creates no privity of contract between itself and the Owner and that it is relying solely on the credit of the buyer for payment hereunder. The subcontractor agrees that it is not authorized by either the Owner or the buyer to enter into contracts on behalf of the Government or the vessel, nor is the subcontractor entrusted with the management of the vessel or authorization to pledge the credit of the vessel. This contract is strictly to support ship, ship repair or alteration and does not create an agency agreement.

8-10 Third Party Indemnification. Seller shall indemnify and hold harmless and, if requested, defend Purchaser, Purchaser's parent and affiliates and each of their officers, directors, and employees

against any claims, losses or expenses (to include reasonable attorney's fees) for: (i) property loss or damage and personal injury or death which may be sustained by Seller or by any of its employees, agents, or subcontractors, at any tier, and (ii) all risk of loss or damage to property and personal injury, disease, or death which may be sustained by third parties, Purchaser, Purchaser's parent and affiliates, or each of their agents, employees or subcontractors, as a result of Seller's performing this Purchase Order.

B-11 Proprietary Information. Except to the extent that information is clearly in the public domain, all information provided by Purchaser to Seller during the performance of this Purchase Order and all improvements, modifications and derivations thereto shall be deemed to be the proprietary information of Purchaser. Seller agrees: (i) to hold Purchaser's proprietary information in confidence and to protect it from release to third parties; (ii) to disclose Purchaser's proprietary information only to seller's employees who have a need-to-know and only after they have been made aware of the proprietary nature of the information; and (iii) to use such proprietary information solely for the purposes of performing this Purchase Order. The restriction on release to third parties contained in this paragraph will not apply to release by the seller to subcontractors that seller uses in performing this Purchase Order provided the seller includes in such subcontracts a provision substantially the same as this paragraph.

B-12 Travel Requirements. When specified in the contract or purchase order as a reimbursable expense, travel expenses (i.e., airfare, lodging, meals, and incidentals) will be reimbursed by the buyer. Seller will not be reimbursed for travel expenses unless records for transportation contain evidence, such as receipts, substantiating actual costs for travel. Reimbursement of airfare shall not exceed the lowest customary standard coach or equivalent airfare offered during normal business hours. Business class or First Class travel is not reimbursable unless approved in advance by the buyer due to special circumstances. Expenses for lodging, meals and incidentals shall be reimbursed at reasonable rates provided that the overnight stay was documented as necessary. Actual costs will be considered reasonable, allowable and reimbursable only to the extent that they do not exceed on a daily basis the

maximum per diem rate as set forth in the Federal Travel Regulations, Joint Travel Regulations and limits set forth in FAR 31.205-46.

**B13** Export Related Requirements.

(i) Export Compliance. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751-2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401-2420 (Export Administration Act) and 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or (2) that it has disclosed to Purchaser's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if natural person, all citizenships and U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(ii) Foreign Personnel. Seller shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Purchaser. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the Immigration and Naturalization Act"), and such other information as Purchaser may reasonably request. No consent granted by Purchaser in response to Seller's request hereunder shall relieve Seller of its obligations to comply with the provisions of (i) above, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

(iii) Indemnification. Seller shall indemnify and save harmless Purchaser from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including reasonable attorney's fees, arising out of claims, suits, allegations or charges of Seller's Failure to comply with the provisions of this paragraph and breach of the Warranty set forth in (i) above. Any failure Seller to comply with the requirements or any breach

of the warranty contained in this paragraph shall be a material breach of this Purchase Order.

(iv) Subcontracts. The substance of this paragraph shall be incorporated into any subcontract entered into by the Seller for the performance of any part of the work under this Purchase Order.

**B-14** Order of Precedence. Any inconsistencies in this purchase order shall be resolved in the following order: (1) Purchase Order exclusive of appendices, drawings, specifications and other plans and documents, (2) appendices, (3) drawings and specifications, (4) other plans or documents referenced in the Purchase Order. Seller shall immediately bring any inconsistencies to the attention of the purchaser in writing.

**B-15** Asbestos. ALL NEW MATERIAL MUST BE ASBESTOS FREE. If a material, which contains asbestos, is inadvertently identified on a "contract Guidance Drawing or other document, it shall be the Contractor's responsibility nevertheless to substitute an otherwise equivalent non-asbestos material. Contractor is responsible for all costs associated with the provision of asbestos free material whether provided for in Specification Items or not.

**Section C: Clauses Incorporated by Reference**

The text of clauses in Section C identified by Federal Acquisition Regulation (FAR) or Defense Federal Acquisition Regulation Supplement (DFARS) clause number are incorporated by reference, subject to the following definitions and the modifications indicated. The full text of all clauses may be examined in the buyer's office, or found on the worldwide web at <http://farsite.hill.af.mil/>.

- "Contractor" means Seller.
- "Subcontractor" means seller's subcontractors.
- "Contract" means this order.

The following FAR clauses incorporated herein are those in effect on the date of this order:

- 52.203-3** Gratuities
- 52.203-7** Anti-kickback Procedures
- 52.203-12** Limitation on Payments to Influence Certain Federal Transactions
- 52.211-5** Material Requirements. (applicable when supplies are furnished.)
- 52.211-17** Delivery of Excess Quantities

**52.213-3** Notice to Supplier (Applicable if this order contains an estimated or "Not-to-Exceed" ceiling price in the schedule).

**52.219-8** Utilization of Small Business Concerns

**2.222-20** Contracts for Materials, Supplies, Articles, and Equipment

**52.221-1** Notice to the Government of Labor Disputes

**52.222-21** Prohibition of Segregated Facilities

**52.222-26** Equal Opportunity

**52.222-35** Equal Opportunity for Veterans.

**52.222-36** Equal Opportunity for Workers With Disabilities

**52.222-20** Walsh-Healey Public Contracts Act (Applicable if order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

**52.223-3** Hazardous Material Identification and Material Safety Data **52.223-5** Pollution Prevention & Right-To-Know Information

**52.225-1** Buy American Act-Supplies

**52.225-13** Restrictions on Certain Foreign Purchases.

**52.219-8** Utilization of Small Business Concerns.

**52.229-3** Federal, State, and Local Taxes, in which "Government" means Buyer and "Contracting Officer" means Buyer's Purchasing Representative.

**52.245-1** Government Property in which "Government" means Buyer, except in the terms "Government Furnished Property," "Government Property," and "Government Owned Property," and in paragraph (c)(1), "Government" means either Government or Buyer.

**52.211-5** Material Requirements. (Applicable only when supplies are furnished).

**52.211-17** Delivery of Excess Quantities.

**52.227-1** Authorization and Consent (Applicable only if this order exceeds \$25,000.)

**52.249-1** Termination for Convenience of the Government (Fixed Price) (Short Form).

**52.249-8** Default in which "contracting officer" and "Government" means "Buyer:"

except in paragraph (c) and (e). In the second sentence of paragraph (c), add "acts of buyer" to the list.

**52.228-5** Insurance - Work on a Government Installation. (Applies only to orders requiring work on a Government installation or vessel.). Contractor shall maintain the following kinds and types of insurance to perform work under this order: Workmen's Compensation - Full coverage per State Workmen's Compensation Law with U.S. Longshoremen's and Harbor Worker's Act endorsement; Comprehensive General Liability of at least \$1 million; Ship Repairers'

Legal Liability Insurance of at least \$2 million.

**52.228-7** Insurance - Liability to Third Persons

**52.203-12** Limitation on Payments to Influence Certain Federal Transactions

**252.247-7023** Transportation of Supplies by Sea

**252.247-7024** Notification of Transportation of Supplies by Sea

**252.225-7001** Buy American Act and Balance of Payments Program

**252.225-7012** Preference for Certain Domestic Commodities

**52.247-63** Preference for U.S. Flag Air Carriers. Supplier shall use U.S. Flag Air Carriers and comply with the provisions of this clause for all international air transportation requirements that may be specified in the order. Submit statement of unavailability, if applicable, to the buyer listed in this order prior to travel.

**252.225-7013** Duty Free Entry

**252.225-7025** Restriction on Acquisition of forgings

**252.245-7001** Tagging, Labeling and Marking of Government Property

**252.223-7001** Hazard Warning Labels

**252.211-7003** Item Unique Identification and Valuation

**52.222-50** Combating Trafficking in Persons (A requirement for a compliance plan and certification appropriate to the size and complexity of the contract is required if any portion of the contract (i) is for supplies, other than COTS items, acquired outside of the United States, or services to be performed outside the United States, and (ii) has an estimated value that exceeds \$500,000.)

**52.244-6** Subcontract for Commercial Items