



# **Century Fasteners Corporation**

## **Terms and Conditions of Purchase**

**01000-CPD-T&C-87 Rev 30**

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**1. GENERAL ACCEPTANCE**

(a) The purchase order (“Order”); (1) is the entire contract between Century Fasteners Corporation (“Buyer”) and the party with which Buyer places the Order (“Seller”) for the goods or services (collectively, the “Goods”) identified in this Order; (2) shall control all purchases of the Goods by Buyer from Seller; (3) shall include plans, specifications, and other referenced documents; and (4) subject to the terms and conditions below.

(b) The Seller by acceptance of the Order acknowledges the responsibility to flow down to their sub-tier suppliers any documented quality requirements including any special customer requirements that may be identified, including special process and key characteristics.

(c) Any of the following shall constitute Seller’s unqualified acceptance of this Order: (1) acknowledgment of this Order; (2) furnishing of any part of the Goods under this Order; (3) acceptance of any payment for the Goods; or (4) commencement of performance under this Order.

(d) Any additional or different terms proposed by Seller are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer.

(e) Failure of any party to enforce its rights under this Order shall not constitute a waiver of such rights or of any other rights under this Order or otherwise.

(f) Suppliers must provide certificates free from inaccurate or illegible alterations.

(g) When part approval is required, no production material shall be made or shipped without written approval from an authorized Century Fasteners employee. Once pre-production samples are produced, the supplier must contact Century Fasteners for the correct contact & instructions on where to send material/paperwork for authorization.



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**2. DELIVERY**

(a) Seller shall deliver the Goods to Buyer (or its designee) in accordance with the delivery schedule specified by Buyer herein. Seller acknowledges that time is of the essence in this Order.

(b) If any event delays, or threatens to delay, the timely performance by Seller of this Order, Seller will immediately notify Buyer in writing of such event and furnish all relevant details with respect thereto. Receipt by Buyer of such notice shall not constitute a waiver of any of the due dates set forth in this Order.

(c) Unless otherwise provided in writing by Buyer, no partial or complete delivery will be made prior to the required delivery date(s). Century Fasteners purchase order "Due dates" are "Dock dates" parts or materials will be considered "On Time" if received on our dock +7 days (early) to - 4 days (late) from the scheduled date. Deliveries received outside of this window, early or late, may affect vendors on time delivery rating. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as Seller reasonably believes necessary to meet the schedule without the prior written approval of Buyer.

(d) Unless otherwise provided in this Order, the Goods shall be delivered on a Free On-Board (FOB) ship point basis.

(e) If the Goods ordered herein require any installation, Seller, at its own cost and expense, shall install such Goods at Buyer's designated site upon the request of Buyer.

(f) Notwithstanding anything else stated herein, Buyer may from time to time direct temporary suspension of scheduled shipments for up to ninety (90) additional days at no cost.

**3. PACKING, MARKING AND SHIPPING**

(a) No charges will be paid to Buyer for packing, handling, transportation, containers, crating, boxing, handling, drayage, storage or other packing expenses. All such expenses shall be paid solely by Seller.

(b) Without limiting the generality of the foregoing, in the event the price of any Goods are based on the weight of such Goods, then such price shall only include the net weight of such Goods and shall not include the weight of any materials used for shipping or packaging.

(c) Unless otherwise specified in this Order, Seller will pack, mark and ship all Goods in a manner which is (1) in accordance with good commercial practice for protection and shipment; (2) acceptable to common carriers for shipment at the lowest rate for the Goods; (3) in accordance with all transportation and Interstate Commerce Commission (ICC) regulations; and (4) adequate to ensure safe arrival of the Goods at the destination specified herein.

(d) Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking or method of shipment shall be reimbursed by Seller upon demand by Buyer.

(e) Seller shall mark all boxes and/or bags with at least: (1) Country of Origin, (2) part number and/or description, (3) lot number with no more than one lot per box, and (4) quantity per box.



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(f) Seller shall include an itemized packing list with each shipment noting at least; 1) the Order number, 2) the part number and/or description, and 3) quantity shipped of each part.

(g) Seller shall include a legible, accurate, and complete Certificate of Conformance that assures compliance to all applicable specifications and requirements with Goods. Additionally, any other applicable certificate as noted herein shall accompany Goods.

(h) Whenever possible all paperwork must be included inside the package. If shipment includes multiple packages, please ensure the package containing paperwork is clearly marked.

**4. CHANGES**

(a) Buyer may at any time, by written order, make changes in, or additions to, the work to be performed or the Goods to be furnished hereunder in any one or more of the following: (1) drawing, designs, statement of work or specifications; (2) method of shipment or packing; (3) place of inspection, delivery, or acceptance; (4) quantities, where reasonable; (5) delivery schedule, where reasonable; and (6) the amount of Buyer furnished property.

(b) If any such changes causes an increase or decrease in the cost of, or the time required for, performance of this Order, then Seller shall notify Buyer in writing upon discovery and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this Order. Any claim by Seller for such adjustment must be asserted by Seller in writing within fifteen (15) days from the date the change is ordered. Nothing contained in this section shall excuse Seller from proceeding with this Order as changed.

(c) On acceptance of Order, Seller shall not make any changes to: (1) the form, fit or function of any Goods; (2) drawings; (3) designs; (4) specifications; (5) manufacturing process; (6) processing facility; (7) source of components; (8) materials; (9) packaging; (10) delivery time; (11) place of delivery; (12) method of transportation or; (13) price of any of Goods, in each case, without obtaining Buyer's prior written consent.

**5. RISK OF LOSS**

Notwithstanding the FOB point designated in this Order, Seller shall bear all risk of loss, damage or destruction for all goods covered by this order until final inspection and acceptance of the goods by Buyer. In addition, Seller shall bear all risk of loss related to rejected goods, or goods requiring correction, after notice of rejection or the need for correction has been given by Buyer to Seller.

**6. QUANTITY**

Buyer need not accept any variation in quantity of Goods shipped except as specified in this Order. Over shipments; (1) may be held by Buyer at Seller's risk and returned to Seller at Seller's expense (which shall include, but not be limited to, a reasonable cost for Buyer's handling); or (2) may be retained by Buyer at no increase in price.

**7. INSPECTION/REJECTION**

(a) Inspection and test by Buyer or its customer of any Goods or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet Order requirements which may be discovered prior to acceptance, or during any warranty period.



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(b) Seller shall investigate any occurrence of 1) non-conforming Goods, (2) non-conforming marking, (3) non-conforming packaging, (4) under shipment, (5) over shipment, (6) mixed lot shipment, (7) shipment to wrong location, (8) early shipment, (9) late shipment, (10) parts missing a Certificate of Conformance, (11) parts missing additional required certificates, (12) shipping damage, (13) inaccurate or illegible certificates, or (14) any other defect. Seller shall document root cause(s) of any defect, and implement documented corrective action(s) to assure no further occurrence of similar defect(s). Upon demand by Buyer, Seller shall provide a Root Cause and Corrective Action (RCCA) report, and a Failure Analysis (FA) report to Buyer.

(c) Buyer reserves the right to cancel all or any part of the undelivered portion of the Purchase Order if Supplier does not provide contractually required documentation upon delivery of parts/lots, and charge Supplier for any loss sustained as a result of such cancellation, including, but not limited to, shipping charges. Further, Company may reject delivery with improper or missing documentation without cancellation of the Purchase Order as to other subsequent required deliveries. Each shipment required under the Purchase Order is to be considered separate from other shipments, and Buyer's right to reject a delivery with missing or incomplete documentation shall not be affected by acceptance of other missing or incomplete documentation deliveries by Supplier. All such cancelled shipments shall be returned to Supplier at Supplier's expense.

(d) Elastomers, paint, labels, and any other age controlled materials that have a manufacturer's recommended shelf life shall have at least 80% of the specified shelf life remaining as received by Buyer. Seller shall print the manufacturing date and expiration date on age controlled parts or boxes. If Buyer determines the Goods have less than 80% of the shelf-life remaining, Goods shall be subject to rejection.

#### **8. INVOICE**

Seller shall submit invoices for each shipment of Goods and each invoice shall include; (1) Order number, (2) item number, (3) description of item, (4) size of item, (5) quantity of item, (6) unit prices, (7) applicable taxes, (8) extended totals, and (9) any other information required by the terms hereof. The original bill of lading or express receipt must accompany each invoice delivered to Buyer. Unless otherwise specified in this Order, no invoice shall be issued prior to the shipment of Goods and no payment will be made prior to the receipt of Goods and a correct invoice.

#### **9. PAYMENT**

(a) Unless otherwise specified in this Order, the payment terms shall be net sixty (60) days and all payment due dates, including, but not limited to discount periods, will be computed from the scheduled delivery date, the date of receipt of Goods or the date of receipt of a correct invoice (whichever is latest) to the date Buyer's check is issued.

(b) Unless freight and other charges are itemized, any discount taken will be taken on the full amount of the invoice. All prices are to be quoted and paid in United States Dollars. Unless otherwise specified in this Order, the prices set forth in this Order include all applicable; (1) foreign taxes, (2) federal taxes, (3) state taxes, (4) local taxes, (5) shipping charges, (6) freight charges, (7) transportation charges, (8) packing charges, and (9) handling charges.

(c) The payment by Buyer of any invoice issued by Seller in connection with this Order shall not constitute the acceptance of any Goods by Buyer. The payment of any invoices by Buyer shall be subject to adjustment for; (1) errors, (2) shortages, (3) defects in any Goods, or (4) any other failure of Seller to meet any requirement of this Order.



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(d) Buyer may, in good faith, notify Seller that Buyer requires further clarification or documentation with respect to an invoice or that Buyer believes that an invoice is in error or otherwise not payable hereunder. Buyer's delay in paying any disputed portion of any invoice in such circumstance shall not constitute a breach or default by Buyer of any of the terms hereof. Payments of all invoices due hereunder shall be deemed correct unless Seller notifies Buyer in writing of any payment discrepancies within thirty (30) days of its receipt of such payment.

(e) On a monthly basis, Seller shall provide Buyer with (1) a detailed monthly aging statement with respect to all invoices that are overdue, if any; and (2) with respect to any known invoices which are in dispute, a detailed discrepancy statement specifying the following: (i) invoice number; (ii) Buyer's Order number; (iii) amount of the discrepancy; (iv) check number and date; and (v) reference debit memo number.

#### **10. DEFAULT**

(a) Buyer may cancel this Order in whole or in part by written notice if: (1) Seller shall become insolvent or make a general assignment for the benefit of creditors; (2) a petition under the Federal Bankruptcy Act is filed by or against Seller; (3) Seller fails to make delivery of the Goods or to perform the services within the time specified in this Order; (4) Seller fails to perform any of the other obligations of this Order, or fails to make progress so as to endanger performance of this Order, in accordance with its terms; or (5) Seller's financial condition shall endanger completion of performance, (provided with respect to (4) and (5) Seller shall fail to remedy any such condition within seven (7) days from the date of receipt of a notice from Buyer concerning the existence of the condition).

(b) In the event Buyer cancels this Order in whole or in part as provided in paragraph (a) of this Section, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, Goods or services similar to those canceled, and Seller shall be liable to Buyer for any excess and incidental costs (including, but not limited to, any late fees incurred by Buyer as a result of such cancellation of this Order) of similarly procured Goods or services. Seller shall continue the performance of this Order to the extent not canceled under the provisions of this section.

(c) After receipt of notice of such cancellation, and upon Buyer's direction, Seller shall transfer title and deliver to Buyer satisfactorily completed work and such work in process as directed by Buyer. Payment for completed work shall be at the Order price and for other items shall be at the Order price or at cost, whichever is less.

(d) If, after notice of cancellation of this Order, it is determined that Seller was not in default under the provisions of this section, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to Section 11 hereof, "Termination for Convenience". The rights and remedies of Buyer provided in this section shall not be exclusive, and are in addition to any other rights and remedies provided by law and under this Order.



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**11. TERMINATION FOR CONVENIENCE**

(a) Buyer shall have the right to terminate this Order in whole or in part at any time, and from time to time, by written notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed Goods, work in progress and materials acquired pursuant to this Order. Seller will proceed promptly to comply with Buyer's instructions respecting such disposition of Goods without awaiting settlement or payment of any termination claim. Within thirty (30) days after the effective date of the termination notice, Seller may submit to Buyer its written claim, if any, for termination costs, in the form and with the certifications prescribed by Buyer. Failure to submit such claim within such thirty (30) day period shall be deemed a waiver by Seller of any and all claims, and a release of all Buyer's liability, arising in any manner out of the termination by Buyer of this Order. Buyer and Seller may agree upon the amount to be paid Seller in connection with Seller's termination of this Order pursuant to this Section. If they fail to agree, the amount to which Seller shall be entitled upon termination of this Order pursuant to this section shall be determined as follows: (1) the Order price for all Goods completed in accordance with this Order and not previously paid for, plus (2) the actual costs incurred by Seller for raw materials specifically purchased by Seller for the production of Goods in this Order and not otherwise used by Seller for the production of goods for other customers; provided that Seller shall use all reasonable efforts to use such raw materials for the production of goods for other customers and Seller shall not be paid for any work performed or cost incurred which reasonably could have been avoided.

(b) Notwithstanding anything else stated herein, Buyer's total liability to Seller for any termination pursuant to this section shall not exceed the aggregate purchase price of the Goods to which such termination applies less any payments otherwise made by Buyer to Seller for such Goods. Any amounts payable for property lost, damaged, stolen or destroyed prior to delivery to Buyer will be excluded from any amounts otherwise payable to Seller under this Section.

(c) In the event payment has been made in excess of the amount determined as being the entitlement of Seller under the provisions of this section, Seller shall reimburse such excess amount to Buyer immediately. Buyer may deduct as a set-off any excess amounts from other open subcontracts or purchase orders with Seller, if any.

(d) Nothing contained in paragraph (a) hereof shall in any way limit or affect Buyer's right to terminate this Order for Seller's default.

**12. ACCESS TO SELLER'S PLANT**

(a) With reasonable advanced notice, representatives of Buyer shall have access to Seller's plant during Seller's regular working day for the purpose of assuring delivery in accordance with the schedule.

(b) Buyer and its customers and regulators may at any time enter Seller's facilities and inspect and test the Goods, including, but not limited to; (1) material, (2) work in process, (3) supplies, (4) the manufacturing process, and (5) finished goods.

(c) If any inspection or test is made by Buyer and/or its customer on the premises of Seller or a lower tier subcontractor, Seller without charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or customer inspectors in the performance of their duties. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. Buyer reserves the right to charge to Seller any cost of inspection and test when Goods are not ready at the time such inspection and test was requested by Buyer or when re-inspection or retest is necessitated by prior rejection. Notwithstanding anything else stated herein, all Goods shall be subject to final inspection by Buyer after delivery to Buyer's facility,



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irrespective of any previous source inspections. Buyer's failure to inspect or accept or reject Goods in a timely manner shall neither relieve Seller from full compliance with all requirements of this Order, nor impose responsibility on Buyer therefor.

(d) Seller shall flow down the requirement in Sellers terms and conditions of purchase that access to sub-tier supplier plants are required for delivery assurance, quality, and regulatory reasons.

### **13. INDEMNITY**

(a) In the event Seller, its employees, agents, subcontractors and/or lower-tier subcontractors enter premises occupied by or under the control of Buyer, or utilize property furnished by Buyer, whether on or off said premises, Seller shall indemnify and hold harmless Buyer, its officers and employees from any and all; (1) loss, (2) cost, (3) damage, (5) expense, (6) liability (including, attorneys' fees) by reason of property damage, (7) personal injury, or (8) death arising out of or in connection with the actions or omissions of Seller, its agents, servants or employees in the performance of this Order.

(b) Without limiting the foregoing, Seller and its subcontractors at all tiers shall maintain public liability and property damage insurance covering the obligations set forth above and shall maintain proper Worker's Compensation Insurance covering all employees performing this Order. Said insurance shall be of the kinds and amounts either specified in this Order or otherwise acceptable to Buyer.

(c) In addition, Seller shall, at Buyer's option, defend, at its own cost and expense, and shall indemnify Buyer, its successors, assigns, distributors, dealers in and users of the Goods, and their agents and employees, and hold them harmless with respect to any and all claims arising out of any (1) use or disposal of the Goods by or for the account of Buyer or its customers; (2) defects in the Goods whether alleged and/or actual, including, but not limited to, improper construction and design, in each case, whether alleged and/or actual; or (3) failure of the Goods to comply with specifications.

(d) In the event any goods sold and delivered hereunder shall be defective in any respect whatsoever, Seller will indemnify and save harmless Buyer from all loss or the payments of all sums of money by reason of all accidents, injuries, or damages to person or property that may happen or occur in conjuncture with use or sale of such Goods and which are contributed to by said defective condition

### **14. INTELLECTUAL PROPERTY INDEMNITY**

(a) Seller shall indemnify and hold harmless Buyer, and/or Buyer's customer(s), and their respective officers, agents and employees against all liabilities, losses, costs and expenses, including attorneys' fees, for infringement of any patent, copyright, trademark or other intellectual property arising out of (1) the manufacture or delivery of the Goods, or performance of services, under this Order; or (2) the use or disposal by, or for the account of, Buyer, and/or Buyer's customer(s), of such Goods.

(b) Intellectual property includes, (1) trademarks, (2)copyright, (3) patents, (4) industrial design rights, and (5) trade secrets as related but not limited to; (1) Software, (2) Hardware, (3) Drawings, (4) Specifications, (5) schematics.

(c) Buyer and/or its customer will duly notify Seller of any such claim, suit or action, and Seller will, at its own expense, fully defend such claim, suit or action on behalf of such indemnities. Seller shall not, without the prior written consent of Buyer, consent to the entry of any judgment against Buyer or enter into any settlement or compromise.





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(d) Without limiting the generality of the foregoing or any other rights, claims or remedies Buyer may have in equity or at law, if any injunction is issued as the result of any such infringement, Seller agrees, in Buyer's sole discretion, which shall be final, conclusive and binding, to (1) refund to Buyer the aggregate amount paid to Seller for any Goods covered by the injunction, or (2) furnish Buyer with acceptable Goods.

#### **15. PROPERTY RIGHTS**

Seller agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or conceived as a result of work performed under this Order. Any; (1) invention, (2) discovery, (3) proprietary information, (4) mask-work, (5) software, (6) system, (7) data, or (8) report resulting from the work performed under this Order shall be the sole property of Buyer. Seller agrees to assign to Buyer any patent or patent application and other intellectual property rights resulting from work performed under this Order, and to provide reasonable support for Buyer's prosecution of such patent application. The parties agree that any original work of authorship created under this Order is a "work made for hire" for purposes of copyright ownership. To the extent Seller has an interest in any original work of authorship created under this Order, Seller agrees to assign its entire interest in such work to Buyer, including any and all rights to derivative works. This Order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, mask-work, copyright or other intellectual property right held by Buyer.

#### **16. CONFIDENTIAL RELATIONSHIP**

(a) Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer in connection herewith (collectively, "Information"). Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Goods and/or services required by this Order. Seller shall not disclose any information relating to this order to any person or entity not authorized by Buyer to receive it. Seller shall use the Information supplied by Buyer only to accomplish work covered by this Order and for no other purpose.

(b) Upon completion, all Information is to be returned to Buyer upon Buyer's request. Without limiting the generality of the foregoing, Seller hereby agrees not to quote for sale to any third parties, without Buyer's prior written authorization, any goods purchased under Buyer's specifications or drawings.

#### **17. BUYER FURNISHED PROPERTY**

(a) If, in connection with the performance of this Order, any property is furnished to Seller by Buyer, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to such property while in Seller's possession or control until such property is returned to Buyer. Seller shall return all such property to Buyer, FOB. carrier Buyer's plant at the completion or termination of this Order (or as otherwise directed by Buyer), in as good condition as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this Order. Buyer shall have the right to enter Seller's premises during normal working hours to inspect its property. Seller shall maintain all Buyer furnished property at Seller's expense.

(b) In addition, Seller shall maintain insurance covering casualty of loss of Buyer's property while such property is in Seller's possession or control. The insurance policy shall be in amounts reasonable under the circumstances and shall name Buyer as an additional insured and loss payee. Upon request from Buyer, Seller shall provide evidence of such insurance.



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**18. WARRANTY**

(a) Seller warrants that the Goods covered by this Order will conform to the designs, specifications, drawings, samples or other descriptions referred to in this Order, will be free from defects in material, workmanship, and design (provided that the design is Seller's responsibility), and will be fit and sufficient for the purpose for which the Goods are intended. The warranties contained in this section shall run to Buyer and its customers. In addition, the warranties set forth in this section shall survive any inspection, delivery, acceptance or payment by Buyer.

(b) Seller further warrants that in the event any Goods are installed by Seller, such Goods shall be installed properly and, upon such installation, shall be in good working order.

(c) If, at any time or within any warranty period, it becomes known by Seller that the Goods may not conform to the requirements of this Order, Seller shall immediately notify Buyer upon discovery of defect, and report suspect lots.

(d) Buyer shall have the right to reject any Goods (or portions thereof) or lots of Goods which are defective in material or workmanship or otherwise not in conformity with the requirements of this Order. Buyer may, at its sole discretion, which shall be final, conclusive and binding, (1) require Seller to rework or replace any defective or nonconforming Goods, at Seller's sole cost and expense, (2) return such defective or nonconforming Goods to Seller, at Seller's sole cost and expense, and recover from Seller any amounts paid by Buyer to Seller for such Goods, or (3) correct the defective or nonconforming Goods and be reimbursed by Seller for such correction.

(e) If Seller fails to promptly replace, correct, or remove such Goods or lots of Goods which are required to be removed, Buyer may; (1) replace or rework such Goods and charge to Seller the cost occasioned Buyer thereby; (2) pay for such Goods at a reduced price which is equitable under the circumstances; or (3) cancel this Order for default as provided in Section 10 entitled "Default."

(f) Seller shall not retender rejected Goods without disclosing the corrective action taken, and obtaining approval of Buyer in writing.

**19. CONSEQUENTIAL DAMAGES WAIVER**

**NOTWITHSTANDING ANYTHING ELSE STATED HEREIN, SELLER SHALL HAVE NO CLAIM AGAINST BUYER FOR LOSS OF ANTICIPATED PROFITS, OR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY REASON OF ANY TERMINATION, DEFAULT OR CHANGE OF THIS ORDER BY BUYER, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**20. PRICE WARRANTY**

Seller warrants that the prices for the Goods sold to Buyer under this Order are no less favorable than those currently extended to any other customer, in comparable status, buying the same or like Goods in equal or smaller quantities and under similar circumstances. If during the term hereof Seller reduces the price for any Goods as to one or more categories of customers in a status comparable to Buyer, the corresponding price herein shall be likewise reduced.



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**21. SUBCONTRACTING**

Seller shall not subcontract any of the work to be performed on any of the Goods to be supplied hereunder without the prior written approval of Buyer.

**22. TOOLS AND DIES**

If any design, sketch, drawing, blueprint, pattern, dye, mold, model, tool, gauge, equipment or special appliance should be made or procured by Seller for producing the Goods covered by this Order, then, immediately upon manufacture or procurement, it shall become the property of Buyer. Seller agrees that such items shall be used exclusively in the production for Buyer of the Goods required by this Order.

**23. FORCE MAJEURE**

Any delay or failure of either Party to perform its obligations, including payment obligations, under this Order will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include, without limitation, epidemics, pandemics, natural disasters, embargoes, explosions, riots, wars, or acts of terrorism). A Party affected by a force majeure event shall promptly notify the other Party in writing and inform the other Party of a new date by which it is capable of meeting its obligations. In the event that a force majeure event extends past sixty (60) days, the unaffected Party may terminate the subject purchase order.

**24. LAWS AND REGULATIONS**

Irrespective of the place of performance, this Order will be construed and interpreted according to the laws of the State of New York, excluding choice of law principles thereof. Seller agrees to complete this Order in strict compliance with all applicable local, state, and federal laws, executive orders, rules, ordinances, and regulations. Seller further agrees to indemnify Buyer against any loss, cost (including attorney's fees and disbursements), liability, or damage by reason of Seller's violation of such laws, executive orders or regulations.

**25. ASSIGNMENT; SET-OFF**

Neither this Order nor any payments hereunder are assignable or transferable without Buyer's prior written approval, and any purported assignment without such consent shall be deemed void. Buyer shall be entitled to set-off against any amounts payable under this Order all amounts due from Seller, and/or any parent, subsidiary, division, affiliated or related entity of Seller, to Buyer.

**26. IMPROPER PAYMENTS, KICKBACKS, GIFTS, GRATUITIES, ETC**

Seller agrees that, in carrying out its obligations hereunder, it will not make payments of any monies or other consideration, and will not make a gift or give a gratuity, of any kind, either directly or indirectly, to any officer, employee, agent or representative of Buyer. Seller further agrees that, if it violates the terms of this section, all payments due Seller under this Order shall be forfeited and Buyer shall have the right to terminate this Order for default.



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**27. MATERIALS**

All materials furnished and to be used by Seller in connection with this Order shall be new, except as specifically provided elsewhere in specifications or drawings provided under this Order. The materials shall be manufactured, handled and used in a workmanlike manner to ensure completed work in accordance with the Order specifications and drawings. Unless otherwise noted on the Order, items controlled by Military or Industry standards or specifications shall be supplied in accordance with the latest revision of the applicable document, in effect on the date the Order is issued, unless otherwise indicated on the face of the Order.

**28. CONTROL OF MATERIALS**

**a) Berry Amendment – Restriction on Acquisition of Certain Articles Containing Specialty Metals**

See DFAR Mandated Contract Clauses in section 30.

**b) International Traffic in Arms Regulation (ITAR)**

In accordance with the Arms Export Control Act, ITAR regulations dictate that information and material pertaining to defense and military related technologies listed on the U.S. Munitions List, may only be shared with U.S. Persons unless a special exemption is authorized. Buyer will send an ITAR Supplier Acknowledgement Letter to Seller which shall be completed and returned prior to any ITAR controlled information being transferred between the parties. Any ITAR controlled document shall be stamped with "ITAR Controlled" or "ITAR Controlled Technical Data."

**29. AS9100 COMMUNICATION**

Seller shall communicate to personnel; (1) U.S. Code Title 18 Chapter 38 – Fraud involving aircraft or space vehicle parts, (2) their contribution to product or service conformity, (3) their contribution to product safety; (4) the importance of ethical behavior.

**30. FAR MANDATED CONTRACT CLAUSES**

The herein Federal Acquisition Regulations (FARs) shall apply:

**(a) 52.211-15 Defense Priority and Allocation Requirements**

If this Order is designated DX or DO, Seller shall prioritize the manufacture and shipment of Goods above other orders, and comply with related laws.

**(b) 52.222-3 Convict Labor**

Seller shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

**(c) 52.222-20 Walsh-Healy Public Contracts Act**

Seller shall pay non-exempt employees time-and-a-half for overtime, and comply with related regulations.

**(d) 52.222-21 Prohibition of Segregated Facilities**



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Seller agrees that it does not provide for its employees any “segregated facilities.” The term does not include separate or single-user rest rooms or dressing rooms to assure privacy between the sexes.

#### **(e) 52.222-22 Previous Contract and Compliance Reports**

Seller represents that it has participated in a previous contract or subcontract subject to the Equal Opportunity clause herein, and has filed all required compliance reports.

#### **(f) 52.222-25 Affirmative Action Compliance**

Seller represents that it has developed and has on file affirmative action programs required by the rules and regulations of the Secretary of Labor.

#### **(g) 52.222-26 Equal Opportunity**

Seller agrees not to discriminate against any employee or applicant for employment because of (1) race, (2) color, (3) religion, (4) gender, (5) sexual orientation, (6) gender identity, or (7) national origin. Seller will take affirmative action to ensure that equal employment opportunity is implemented in employment (1) upgrading, (2) demotion, (3) transfer, (4) recruitment, (5) recruitment advertising, (6) layoff, and (7) termination, (8) rates of pay and other forms of compensation, and (9) selection for training.

#### **(f) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans**

Seller agrees not to discriminate against any employee or applicant for employment because of veteran status.

#### **(g) 52.222-36 Affirmative Action for Workers with Disabilities**

Seller agrees not to discriminate against any employee or applicant for employment because of disability. Seller shall take affirmative action to ensure that equal employment opportunity is implemented.

#### **(h) 52.222-50 Combating Trafficking in Persons**

Seller shall not; 1) Engage in trafficking in persons, 2) Procure commercial sex acts, 3) Use forced labor, 4) deny access by an employee to the employee’s identity or immigration documents, 5) Use misleading or fraudulent practices during recruitment, 6) Charge employees recruitment fees, 7) Fail to provide return transportation upon the end of employment, 8) Provide arranged housing that fails to meet the host country housing and safety standards, 9) Fail to provide an employment contract, recruiting agreement, or other required work document in writing.

### **31. DFAR MANDATED CONTRACT CLAUSES**

The herein Defense Federal Acquisition Regulations (DFARs) shall apply:

#### **(a) 252.203-7002 Requirement to Inform Employees of Whistleblower Rights**

The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections. Seller shall include the substance of this clause in flow-down subcontracts.

#### **(d) 252.204-7012 Cyber Security**

Seller shall implement adequate cyber security protections for covered contractor information systems, compliant to the National Institute of Standards (NIST) Special Publication 800-171. Seller shall report cyber incidents within 72 hours of discovery.

#### **(c) 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Berry Amendment)**



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i) If DFAR clause 252.225-7009 is called out on the face of this Order, Seller shall provide a Certificate of Conformance with Goods stating the melt location of all "Specialty Metals" in the Goods, assuring components were melted in the USA or a "Qualifying Country," which are; (1) Australia, (2) Austria, (3) Belgium, (4) Canada, (5) Czech Republic, (6) Denmark, (7) Egypt, (8) Finland, (9) France, (10) Germany, (11) Greece, (12) Israel, (13) Italy, (14) Luxembourg, (15) Netherlands, (16) Norway, (17) Poland, (18) Portugal, (19) Slovenia, (20) Spain, (21) Sweden, (22) Switzerland, (23) Turkey, (24) Japan, (25) United Kingdom of Great Britain and Northern Ireland.

ii) "Specialty Metals" are defined as steel with alloy content exceeding one or more of the following limits: (1) manganese 1.65%, (2) silicon 0.60%, (3) copper 0.60%, (4) aluminum 0.25%, (5) chromium 0.25%, (6) cobalt 0.25%, (7) molybdenum 0.25%, (8) nickel 0.25%, (9) niobium 0.25%, (10) titanium 0.25%, (11) tungsten 0.25%, or (12) vanadium 0.25%. "Specialty Metals" also include; (1) Alloyed Nickel with alloying metals in excess of 10 percent, (2) Alloyed Cobalt with alloying metals in excess of 10 percent, (3) Alloyed Titanium, and (4) Alloyed Zirconium.

#### **(d) 252.235-7002 Animal Welfare**

Seller shall not conduct research involving an animal as an experimental subject unless approved in writing by the DoD. Seller shall include the substance of this clause in all subcontracts that may include research involving animal subjects.

#### **(e) 252.235-7004 Protection of Human Subjects**

Seller shall not conduct research involving a human being as an experiment subject except as part of an approved Food and Drug Administration study. Seller shall include the substance of this clause in all subcontracts that may include research involving human subjects.

### **32. MISCELLANEOUS**

a) This Order contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Order. No amendment, modification or waiver of this Order shall be binding on either party unless it is in writing and is signed by an authorized representative of Buyer and Seller. If any provision, or part thereof, of this Order shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision or the part thereof and not in any way affect or render invalid or unenforceable any other provisions of this Order, and this Order shall be carried out as if such invalid or unenforceable provision, or part thereof, had been reformed, and any court of competent jurisdiction is authorized to so reform such invalid or unenforceable provision, or part thereof, so that it would be valid, legal and enforceable to the fullest extent permitted by applicable law.

b) Each party acknowledges that it has been represented by counsel, or has been afforded the opportunity to be represented by counsel, in connection with this Order and the transactions contemplated hereby. Accordingly, any rule or law or any legal decision that would require the interpretation of any claimed ambiguities in this Order against the party that drafted it has no application and is expressly waived by the parties.

c) The provisions of this Order shall be interpreted in a reasonable manner to give effect to the intent of the parties hereto. All remedies stated herein are in addition to all other remedies at law or in equity.



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#### **33. ADDITIONAL TERMS AND CONDITIONS OF PURCHASE FOR GOVERNMENT PRIME CONTRACTORS**

**If this Order is for a U.S. government prime contractor, the current revisions of the additional herein Federal Acquisition Regulations (FARs) and Defense Federal Acquisition Regulations (DFARs) shall apply:**

<b>FAR 52.203-19</b>	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS
<b>FAR 52.204-10</b>	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS
<b>FAR 52.204-14</b>	SERVICE CONTRACT REPORTING REQUIREMENTS
<b>FAR 52.204-15</b>	SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS
<b>FAR 52.204-21</b>	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS
<b>FAR 52.204-23</b>	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES
<b>FAR 52.204-25</b>	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
<b>FAR 52.209-6</b>	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
<b>FAR 52.222.35</b>	EQUAL OPPORTUNITY FOR VETERANS
<b>FAR 52.222-21</b>	PROHIBITION OF SEGREGATED FACILITIES
<b>FAR 52.222-26</b>	EQUAL OPPORTUNITY
<b>FAR 52.222-35</b>	EQUAL OPPORTUNITY FOR VETERANS
<b>FAR 52.222-37</b>	EMPLOYMENT REPORTS ON VETERANS
<b>FAR 52.222-36</b>	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES ACT
<b>FAR 52.222-41</b>	SERVICE CONTRACT LABOR STANDARDS
<b>FAR 52.222-50</b>	COMBATING TRAFFICKING IN PERSONS
<b>FAR 52.222-55</b>	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658





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<b>FAR 52.222-62</b>	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706
<b>FAR 52.223-7</b>	NOTICE OF RADIOACTIVE MATERIALS
<b>FAR 52.223-18</b>	ENCOURAGING CONTRACTOR POLICIES THAT BAN TEXT MESSAGING WHILE DRIVING
<b>FAR 52.225-13</b>	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
<b>FAR 52.226-6</b>	PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS
<b>FAR 52.232-40</b>	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS
<b>FAR 52.244-6</b>	SUBCONTRACTS FOR COMMERCIAL ITEMS
<b>DFARS 252.203-7001</b>	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (Applies if this Contract exceeds \$150,000)
<b>DFARS 252.203-7002</b>	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS
<b>DFARS 252.203-7003</b>	AGENCY OFFICE OF THE INSPECTOR GENERAL (Applies when FAR 52.203-13 applies to this Contract.)
<b>DFARS 252.203-7004</b>	DISPLAY OF FRAUD HOTLINE POSTER(S) (Applies in lieu of FAR 52.203-14.)
<b>DFARS 252.204-7000</b>	DISCLOSURE OF INFORMATION
<b>DFARS 252.204-7009</b>	LIMITATIONS ON THE USE AND DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION
<b>DFARS 252.204-7012</b>	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING
<b>DFARS 252.204-7015</b>	NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT
<b>DFARS 252.204-7018</b>	PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES
<b>DFARS 252.204-7020</b>	NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS
<b>DFARS 252.211-7000</b>	ACQUISITION STREAMLINING
<b>DFARS 252.211-7003</b>	ITEM UNIQUE IDENTIFICATION AND VALUATION
<b>DFARS 252.215-7000</b>	PRICING ADJUSTMENTS (Applies if FAR 52.215-12 or 52.215-13 applies to this Contract.)
<b>DFARS 252.219-7003</b>	SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) - BASIC (Applies if FAR 52.219-9 applies to this Contract.)





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- DFARS 252.222-7006** RESTRICTION ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (The certification in paragraph (b)(2) applies to both SELLER in its own capacity and to SELLER's covered subcontractors.)
- DFARS 252.223-7001** HAZARD WARNING LABELS (Applies if this Contract requires the delivery of hazardous materials.)
- DFARS 252.223-7002** SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (Applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants.)
- DFARS 252.223-7003** CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES
- DFARS 252.223-7006** PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS
- DFARS 252.223-7007** SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.)
- DFARS 252.223-7008** PROHIBITION OF HEXAVALENT CHROMIUM
- DFARS 252.225-7001** BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (Applies if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.)
- DFARS 252.225-7007** PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (Applies if SELLER is supplying items on the U.S. Munitions list.)
- DFARS 252.225-7009** RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (Applies if the Work to be furnished contains specialty metals. Paragraph (d) is deleted.)
- DFARS 252.225-7012** PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES
- DFARS 252.225-7013** DUTY-FREE ENTRY
- DFARS 252.225-7016** RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
- DFARS 252.225-7021** TRADE AGREEMENTS (Applies if the Work contains other than U.S.- made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)
- DFARS 252.225-7033** WAIVER OF UNITED KINGDOM LEVIES (Applies if this Contract is with a United Kingdom firm. Note 2 applies. Note 1 applies to the second sentence of paragraph (a).)



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- DFARS 252.225-7043** ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES
- DFARS 252.225-7048** EXPORT-CONTROLLED ITEMS
- DFARS 252.225-7052** RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN
- DFARS 252.226-7001** UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS
- DFARS 252.227-7013** RIGHTS IN TECHNICAL DATA -- NONCOMMERCIAL ITEMS (Applies in lieu of FAR 52.227- 14.)
- DFARS 252.227-7014** RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (Applies in lieu of FAR 52.227-14.)
- DFARS 252.227-7015** TECHNICAL DATA -- COMMERCIAL ITEMS (Applies to commercial items delivered under this Contract)
- DFARS 252.227-7016** RIGHTS IN BID OR PROPOSAL INFORMATION
- DFARS 252.227-7019** VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE
- DFARS 252.227-7025** LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS
- DFARS 252.227-7026** DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (Note 1 applies.)
- DFARS 252.227-7027** DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
- DFARS 252.227-7028** TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (The definitions for "contract" and "subcontract" shall not apply herein, except for the first reference to contract. Note 4 applies.)
- DFARS 252.227-7030** TECHNICAL DATA - WITHHOLDING OF PAYMENT
- DFARS 252.227-7037** VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA
- DFARS 252.227-7038** PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) SELLER is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the Contract is for experimental, developmental, or research work.)
- DFARS 252.228-7005** ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (In paragraph (a) note 5 applies. In paragraph (b) note 3 applies.)
- DFARS 252.231-7000** SUPPLEMENTAL COST PRINCIPLES



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- DFARS 252.235-7003** FREQUENCY AUTHORIZATION - BASIC (Applies if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. Note 2 applies.)
- DFARS 252.232-7017** ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS - PROHIBITION ON FEES AND CONSIDERATION
- DFARS 252.243-7001** PRICING OF CONTRACT MODIFICATIONS (Applies if this is a fixed price contract).
- DFARS 252.244-7000** SUBCONTRACTS FOR COMMERCIAL ITEMS
- DFARS 252.246-7003** NOTIFICATION OF POTENTIAL SAFETY ISSUES (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)
- DFARS 252.246-7007** CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM
- DFARS 252.246-7008** SOURCES OF ELECTRONIC PARTS (Applies if this contract is for electronic parts or assemblies containing electronic parts, unless Seller is the original manufacturer.
- DFARS 252.247-7023** TRANSPORTATION OF SUPPLIES BY SEA - BASIC (Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.
- DFARS 252.247-7024** NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA
- DFARS 252.249-7002** NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (Applies if this Contract exceeds \$700,000.)
- CFR 9.405-2** RESTRICTIONS ON SUBCONTRACTING