

**GENERAL PROVISIONS FOR COMMERCIAL ITEMS  
GP-COM Rev. 7 01/16/02**

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**1.0 DEFINITIONS**

Whenever used in this document, the following definitions shall be applicable unless the content indicates otherwise:

**Buyer** shall mean the company (under DOE Prime Contract No. DE-AC06-96RL13200) entering into this Contract with the Contractor.

**Contractor** is a person or organization entering into this Contract with the Buyer

**Independent Contractor** By accepting this contract, Contractor certifies that it is acting as an independent contractor with responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract which may appear to give Buyer the right to direct Contractor as to the details of the performance of the work or to exercise a measure of control over the Contractor, shall mean that the Contractor shall follow the desires of the Buyer only as to the intended results of the Work. Nothing in this Contract shall be deemed to represent that Contractor, or any of the Contractor’s employees or agents, are the agents, representatives or employees of Buyer or the Government.

**Contract**, this agreement between Buyer and Contractor; also includes purchase order, task orders, releases and other agreements.

**Government**, the United States of America including the U.S. Department of Energy (DOE) and/or any duly authorized representative of it, including the Contracting Officer.

**Item**, commercial item including minor modifications thereto which is customarily used for non-governmental purposes and have been or will be sold, leased, or licensed to the general public.

**Service**, a service of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices and not sold on an hourly rate basis unless it is based on an established catalog or market price for a specific end product service.

## **2.0 ORDER OF PRECEDENCE**

Inconsistencies shall be resolved according to the following descending order of precedence: (1) item description, (2) the Contract document, (3) special provisions set forth in the body of the Contract and (4) these Commercial Provisions.

## **3.0 ADMINISTRATION**

Contractor, by signing this Contract or starting performance, agrees to comply with the terms and conditions, specifications and other documents that this Contract incorporates by reference or attachment. The specifications, drawings and documents referred to herein is the entire agreement between the parties. Prior negotiations, proposals, and correspondence pertaining to this Contract, or the subject matter hereof, are superseded. Contractor terms and conditions set forth on standard forms shall not be part of this Contract unless incorporated by modification into this Contract.

Buyer failure to enforce any performance or to exercise any right or privilege of the Contract or as provided by law shall not relieve the Contractor from any requirements of this Contract. Contract provisions intended to survive Contract termination; completion or expiration shall continue as valid and enforceable obligations.

In the event any Provision, or any part or portion of any Provision of this Contract should be found to be invalid, void or otherwise unenforceable, such finding shall not affect the remaining part or portions of that Provision, or any other Provision.

## **4.0 WARRANTY**

Contractor warrants that all items and services conform with Contract specifications, drawings, and other descriptions and will be of merchantable quality, fit and sufficient for the purposes for which they are intended as evidenced in the Contract. Warranty shall begin upon Buyer's acceptance and extend for a period of (1) the manufacturer's warranty or six months, whichever is longer, if Contractor is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Contractor is the manufacturer of the item or has modified it. If any nonconformity is discovered within that time, Contractor shall promptly repair or replace such items or re-perform services. Transportation of replacement items, return of nonconforming items and repeat performance of services shall be at Contractor's expense. If repair, replacement or re-performance of services is not timely, Buyer may elect to return the nonconforming items, repair, replace and/or re-procure the item or service at Contractor's expense. This warranty shall restart upon Buyer's acceptance of the repair, replacement or re-performance.

## **5.0 INDEMNITY**

Contractor agrees to assume the risk of and to release, defend, indemnify and hold harmless the Buyer, Government, affiliated companies and their directors, officers, employees, agents and representatives, from and against all loss, damage, liability, cost and expense (including attorney's fees) arising out of any (1) failure to comply with any law, ordinance, regulation, rule or order, (2) injury (including death) to any person or (3) damage to any property in any way connected with the performance of this Contract in accordance with the State of Washington Comparative Fault Statute (RCW 4.22) Contractor agrees to indemnify, hold harmless and defend Buyer and the Government from and against all laborers', materialman's, mechanics', or other liens arising from the performance of Contractor's obligations under this Contract and shall keep the premises of Buyer and the Government free from all such claims, liens, and encumbrances.

To the extent that the Contractor, Contractor's workers or subcontractors are covered by the Washington Industrial Insurance Act (RCW Title 51 including any amending, substitute or replacement statutes) or any other industrial insurance, worker's compensation or similar act (Acts), Contractor specifically waives any and all immunity provided by these Acts.

## **6.0 NUCLEAR SAFETY AND INDEMNITY**

The provisions of 48 CFR 952.250-70, Nuclear Hazards Indemnity Agreement, are incorporated by reference into these terms and conditions for the delivery of any product or service that has nuclear safety implications. Contractor shall flow down these provisions to all subcontractors and suppliers unless expressly waived in writing by Buyer.

Contractor will be indemnified by the U.S. Department of Energy (DOE) against (1) claims for public liability, and (2) legal costs arising from any nuclear incident under the provisions of 48 CFR 952.250-70. However, Contractor and its subcontractors and suppliers that are indemnified are subject to civil penalties under provisions of the Atomic Energy Act of 1954, as amended, for violations of DOE nuclear safety related rules, regulations, and orders. In addition, directors, officers, and employees of Contractor and its subcontractors and suppliers that are indemnified are subject to criminal penalties for knowing and willful violations.

## **7.0 ASSIGNMENT**

Neither this Contract nor any portion hereof shall be assigned or delegated without Buyer's prior written consent. Buyer reserves the right to assign this Contract to Government or its designee, and in case of such assignment and by notice to the Contractor, Buyer shall have no further Contract responsibility.

## **8.0 CHANGES**

No substitutions shall be made in this Contract without the prior written consent of the Buyer. The Buyer reserves the right to make changes within the general scope of this Contract by unilateral modification. Such changes may include changes in (1) the description of the items or services required; (2) the quantities ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection or acceptance. The Contractor shall promptly comply with any such change made by the Buyer. If any change affects the price of or the time required for performance, Contractor shall identify the impact as soon as practical and request an equitable adjustment within 60 days of the change notice. The equitable adjustment to the price and/or delivery requirements and other affected provisions of the Contract shall be made by a mutual agreement and modification to this Contract in a timely manner.

## **9.0 PERFORMANCE CONCERNS**

If the Contractor fails to comply with any Contract terms or to make sufficient progress as to endanger performance, the Buyer may suspend or terminate this Contract for cause. In the event of termination for cause, the Buyer shall be

liable only for any item and/or service accepted. The Buyer may complete Contract performance by any reasonable means and the Contractor shall be responsible for additional costs incurred by the Buyer.

The Buyer may suspend the Contractor's right to perform any part of or all of this Contract for an indefinite period. If any such suspension significantly delays the progress or causes the Contractor additional direct expenses in the performance of the Contract, not due to the fault or negligence of the Contractor, a Contract modification shall adjust compensation to the Contractor based on the additional direct Contractor expenses to perform and the time of performance shall be extended by the actual suspension duration. Contractor's claim for compensation must be supported by appropriate documentation within ten (10) calendar days from the date performance resumes.

The Contractor shall not be liable for delays in performance due to causes beyond the Contractor's reasonable control or for delays of the Contractor's suppliers at any tier if the delay is beyond the control of both the Contractor and its suppliers and without fault or negligence of either.

### **10.0 TERMINATION FOR CONVENIENCE**

The Buyer may, at its sole discretion, terminate the Contract in total or any portion not completed by giving the Contractor written notice. Upon notice of termination, the Contractor shall, unless otherwise directed in writing, discontinue all performance on the date specified in the notice and take action to minimize costs to the Buyer. Payment for items and/or services already completed or in the process of completion shall be adjusted between the Buyer and the Contractor in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the item and/or service, or any anticipated profits thereon. Contractor shall deliver, assign all completed and partial items with all applicable warranties or dispose of items as directed by Buyer before final payment. Such payments shall not exceed the total value of the Contract prior to termination for convenience.

### **11.0 LAWS AND REGULATIONS**

Contractor shall comply with all applicable federal, state and local laws and ordinances and all pertinent lawful orders, rules and regulations. Contractor shall act as an independent entity and not as an agent or employee of Buyer or the Government.

### **12.0 RESOLUTION OF DISPUTES**

The Contractor and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this Contract through discussion and negotiation. If such efforts fail to achieve a mutually agreeable resolution, the parties agree to alternative disputes resolution (ADR) and to join in such arbitration proceeding as Buyer may determine appropriate. Parties shall submit to such jurisdiction and be bound by the judgment rendered according to the ADR rules. Contractor shall proceed diligently without interruption in the performance of this Contract pending final resolution of any dispute arising under this Contract between the parties hereto or between the Contractor and its subcontractors.

If ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be a court of competent jurisdiction in the State of Washington.

No interest is payable to Contractor for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment (and then only from the date of the entry of judgment).

### **13.0 COUNTERFEIT FASTENERS AND COMPONENTS**

Buyer reserves the right to question and/or require Contractor to certify and/or furnish proof regarding the quality, authenticity, application or fitness for use of the items supplied by the Contractor under this Contract. Any items furnished as part of this Contract and which have been previously found by Buyer, the Department of Energy, or the Department of Commerce to be counterfeit or which are listed by the Department of Commerce to be suspect will be

deemed, without more proof, to be subject to the above requirement of further proof or certification. Buyer also reserves the right to question the circumstances and make available a report of any such review to the Government. All costs associated with conducting inquiries into and reporting on fasteners and components determined to be counterfeit shall be recovered by Buyer from Contractor.

#### **14.0 TAXES**

The Contractor is not obligated to collect Washington State sales or use tax from the Buyer with respect to this contract. The Buyer, Fluor Hanford (Washington State UBI Number 601-678-024), is in possession of a DIRECT PAY PERMIT (number 27) issued by Washington State Department of Revenue, effective January 1, 2002 through December 31, 2005. A copy is available from the Buyer upon request. All other Federal, state, county, municipal or other sales, use, excise or similar taxes not excluded by the Washington State Department of Revenue Direct Pay Permit must be included in the Contract amount. If the Contractor, as a result of this contract becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the Contractor shall take such tax credit and assign such tax credit to the Buyer.

#### **15.0 INVOICING AND PAYMENT**

Contractor shall prepare all invoices in a form satisfactory to and approved by Buyer. Except to the extent expressly stated elsewhere in this contract, the contract price shall be payable thirty (30) calendar days after receipt by Buyer of a proper invoice. All unit pricing, and payments made, shall be in U.S. dollars only, in the forms of cash, check or electronic transfer as may be agreed upon.

As a minimum, the invoice shall clearly identify the invoice number, contract, release and/or item number(s) for which payment is being requested, and contain a corresponding description of each item billed, and amount being billed. Submittal of an invoice constitutes contractor's certification that the materials, work and/or services have been delivered and are in accordance with all terms of the contract.

At Buyer's request Contractor shall furnish evidence, satisfactory to Buyer, that all labor and materials furnished and equipment used during the period covered by any invoice has been paid for in full and that the work is not subject to liens or claims on account thereof. Buyer may withhold payment of invoices until Contractor furnishes such evidence.

In the event an invoice is submitted, in accordance with contract terms, for work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. The final invoice shall be submitted for payment after completion and acceptance of work by Buyer and compliance by Contractor with all terms of this contract. It shall be supported by a written acceptance of the work signed by Buyer, and a certification and release.

Any invoice submitted, which fails to comply with the terms of this contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account. Final payment shall not relieve Contractor of any obligation under contract guarantees.

#### **16.0 PAYMENTS AND TITLE**

Contractor warrants full and unrestricted title to the Government for all items purchased under this Contract and is free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Excess items received that are of a nominal value shall be kept by Buyer at no cost to the Buyer. All items received in excess of Contract requirements that are returned shall be returned at Contractor's expense.

Buyer is entitled to offset and/or deduct any amount owed to the Contractor under this Contract for any amounts owed the Buyer under this Contract or any other Contract with the Buyer.

## 17.0 CONFIDENTIAL INFORMATION

Drawings, specifications and other information obtained by Contractor from Buyer or the Government in connection with the Work shall be held in confidence by Contractor and shall not be disclosed to third parties or used by Contractor for any purpose other than for the performance of Work or as authorized in writing by Buyer. All such documents furnished by Buyer or the Government to Contractor shall remain their property, and upon completion of the Work Contractor shall, as requested by Buyer, either destroy or return such documentation including any copies thereof.

## 18.0 PRINTING: DEAR 970.5208-1 PRINTING (TBE) (MODIFIED)

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving individual printing orders costing not more than \$1000, if the work is not of a continuing or repetitive nature, and as certified by the Public Printer, if the work is included in a class of work which cannot be provided more economically through the Government Printing Office, will not be deemed printing. A requirement is defined as a single publication document.

The term printing includes the processes of composition, plate making, presswork, duplication, silkscreen processes, microfilm, and the end items of such processes.

If fulfillment of the contract will necessitate reproduction in excess of limit set forth above, the Contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on DOE's behalf the production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Officer (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed and may result in criminal penalties under 31 U.S.C. 1350.

The contractor will include in each of its subcontracts hereunder a provision substantially the same as this Clause including this paragraph.

## 19.0 CLAUSES INCORPORATED BY REFERENCE

In as much as Government funds are being used to make payment against this Contract, the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulations (DEAR) clause(s) are hereby incorporated by reference into this Contract and shall apply as applicable. For these specific provisions, Contractor means Contractor and Contracting Officer means the assigned Buyer. The text of the FAR/DEAR clauses may be obtained from the Buyer upon request or by linking to the regulations via the Buyer's INTERNET homepage at <http://www.hanford.gov/pmm/index.html>

- FAR 52.222-26 Equal Opportunity (E.O.11246) (Feb 1999)
- FAR 52.222-35 Affirmative Action for Special Disabled Veterans and Veterans of the Vietnam Era (April 1998)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (29 U.S.C. 793) (June 1998)
- FAR 52.222-41 Service Contract Act of 1965, as amended (May 1989)
- DEAR 952.204-2 Security (Sept. 1997)
- DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (June 1996)