



**MANUFACTURING and SUPPLY Agreement
Exhibit D – FAR Clauses**

1. If a Statement of Work under this Agreement is placed under a U.S. Government contract or subcontract, then in addition to the terms and conditions of the Agreement the FAR and DFARS provisions identified below shall apply as applicable. Further, if a Statement of Work under this Agreement is placed under a U.S. Government contract or subcontract, then in the event of a conflict between the following FAR and DFARS provisions and the terms and conditions of this Agreement, the FAR and DFARS provisions shall control.
2. The following clauses set forth in the FAR in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms "Government", "Contracting Officer" and "Contractor" shall be revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. "Subcontractor", however, shall mean "Seller's Subcontractor" under this Purchase Order.
- A. APPLICABLE TO ALL ORDERS:
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| 1. Definitions | 52.202-1 |
| 2. Gratuities | 52.203-3 |
| 3. Covenant Against Contingent Fees | 52.203-5 |
| 4. Price or Fee Adjustments for Illegal or Improper Activity | 52.203-10 |
| 5. Security Requirements (excluding paragraph (c)) | 52.204-2 |
| 6. Material Requirements | 52.211-5 |
| 7. Defense Priority and Allocation Requirements | 52.211-15 |
| 8. Utilization of Small Business Concerns | 52.219-8 |
| 9. Notice to the Government of Labor Disputes | 52.222-1 |
| 10. Service Contract Act of 1965, As Amended | 52.222-41 |
| 11. Hazardous Material Identification and Material Safety Data – "Government" means "Government and Buyer" | 52.223-3 |
| 12. Notice of Radioactive Materials | 2.223-7 |
| 13. Ozone-Depleting Substances | 52.223-11 |
| 14. Privacy Act | 52.224-2 |
| 15. Buy American Act- Balance of Payments Program – Supplies | 52.225-1 |
| 16. Duty Free Entry | 52.225-8 |
| 17. Restrictions on Certain Foreign Purchases | 52.225-13 |
| 18. Sanctioned European Union Country End Products (if less than \$175,000) | 52.225-15 |
| 19. Authorization and Consent – Alternate 1 | 52.227-1 |
| 20. Patent Indemnity | 52.227-3 |
| 21. Refund of Royalties | 52.227-9 |
| 22. Filing of Patent Applications – Classified Subject Matter | 52.227-10 |
| 23. Patent Rights – Retention by the Contractor (Short Form) | 52.227-11 |
| 24. Patent Rights – Retention by the Contractor (Long Form) | 52.227-12 |
| 25. Patent Rights – Acquisition by the Government | 52.227-13 |
| 26. Rights in Data – General | 52.227-14 |
| 27. Additional Data Requirements | 52.227-16 |
| 28. Commercial Computer Software – Restricted Rights | 52.227-19 |
| 29. Rights to Proposal Data (Technical) | 52.227-23 |
| 30. Insurance – Work on A Government Installation | 52.228-5 |
| 31. Interest | 52.232-17 |
| 32. Industrial Resources Developed Under Defense Production Act Title III | 52.234-1 |
| 33. Accident Prevention | 52.236-13 |
| 34. Protection of Government Buildings, Equipment, and Vegetation | 52.237-2 |
| 35. Continuity of Services | 52.237-3 |
| 36. Stop Work Order | 52.242-15 |
| 37. Changes – Fixed Price | 52.243-1 |
| 38. Subcontracts for Commercial Items and Commercial Components | 52.244-6 |
| 39. Government Property (Fixed Price Contracts) "Government" means "Government" and/or "Buyer". The fourth sentence of paragraph (b) is changed to read: "Neither the Government nor the Buyer shall be liable..." | 52.245-2 |
| 40. Special Tooling – In paragraph (c) "Government" means "Government or Buyer" | 52.245-17 |
| 41. Special Test Equipment – In paragraph (b)(4) "Government" means "Government or Buyer" | 52.245-18 |
| 42. Government Property Furnished "As Is" | 52.245-19 |
| 43. Inspection of Supplies – Fixed Price | 52.246-2 |
| 44. Inspection of Services – Fixed Price | 52.246-4 |
| 45. Responsibility for Supplies | 52.246-16 |
| 46. Preference for U.S. – Flag Air Carriers | 52.247-63 |
| 47. Preference for Privately Owned U.S.-Flag Commercial Vessels | 52.247-64 |
| 48. Termination for Convenience of the Government (Fixed Price) "Government" shall mean "Buyer". In (c) the term "120 days" is changed to "60 days". In (d) the term "45 days" is changed to "90 days". The term "one year" in paragraph (e) is changed to "six months". The term "90 Days" in paragraph (f) is changed to "45 days." | 52.249-2 |
- B. ORDER OVER \$10,000 ALSO INCLUDE THE FOLLOWING:
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| 1. Walsh-Healy Public Contracts Act | 52.222-20 |
| 2. Prohibition of Segregated Facilities | 52.222-21 |
| 3. Equal Opportunity | 52.222-26(b) |
| 4. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (over \$25,000) | 52.222-35 |
| 5. Affirmative Action for Workers with Disabilities | 52.222-36 |
| 6. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (over \$25,000) | 52.222-37 |
- C. ORDERS OVER \$100,000 ALSO INCLUDE THE FOLLOWING:
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| 1. Restrictions of Subcontractor Sales to the Government | 52.203-6 |
| 2. Anti-Kickback Procedures (less paragraph (c)(1)) | 52.203-7 |
| 3. Limitation on Payments to Influence Certain Federal Transactions | 52.203-12 |
| 4. Audit and Records – Negotiation | 52.215-2 |
| 5. Integrity of Unit Prices (less paragraph b) | 52.215-14 |
| 6. Contract Work Hours and Safety Standards Act – Overtime Compensation (pars. (a)-(d)) | 52.222-4 |
| 7. Toxic Chemical Release reporting (less paragraph (e)) | 52.223-14 |
| 8. Notice and Assistance Regarding Patent and Copyright Infringement | 52.227-2 |
| 9. Value Engineering | 52.248-1 |
| 10. Executive Order 13201 (2/17/01) – Notification of Employee Rights Concerning Payment of Union Dues or Fees | |
| 11. Executive Order 11246 – The Contractor agrees to comply with executive order 11246 and federal regulations (41CFR Part 60-1.2,3,4) prohibiting employment discrimination based on race, religion, sex or national origin, and requiring affirmative action plans to ensure positive outreach, recruitment and elimination of obstacles to Equal Employment Opportunity; and the non-discrimination / affirmative action regulations of the Vietnam Era Veterans Readjustment Act (41 CFR Part 60-741), the Vocational | |
- Rehabilitation Act (41 CFR Part 60-250). The relevant Equal Opportunity Clauses are hereby incorporated by reference.
- D. ORDERS OVER \$500,000 AND/OR THE APPLICABLE COST OR PRICING DATA THRESHOLD:
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| 1. Pension Adjustments and Asset Revisions (if cost or pricing data required) | 52.215-15 |
| 2. Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (if cost or pricing data required) | 52.215-18 |
| 3. Notification of Ownership Changes | 52.215-19 |
| 4. Small Business Subcontracting Plan - (Note to Seller: This clause requires adoption of small business subcontracting plan and reporting) | 52.219-9 |
- E. UNLESS OTHERWISE EXEMPT ALSO INCLUDE THE FOLLOWING:
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| 1. Price Reduction for Defective Cost or Pricing Data | 52.215-10 |
| 2. Price Reduction for Defective Cost or Pricing Data Modification | 52.215-11 |
| 3. Subcontractor Cost or Pricing Data | 52.215-12 |
| 4. Subcontractor Cost or Pricing Data Modifications | 52.215-13 |
| 5. Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data | 52.215-20 |
| 6. Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data Modifications | 52.215-21 |
- F. APPLICABLE TO COST REIMBURSEMENT, TIME & MATERIAL OR LABOR HOURS ORDERS:
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| 1. Facilities Capital Cost of Money | 52.215-16 |
| 2. Allowable Cost and Payment (Cost Reimbursement) – Seller agrees to execute assignment documents in order to meet the requirements of subsection (b) | 52.216-7 |
| 3. Fixed Fee – applicable if this is a cost plus fixed fee order | 52.216-8 |
| 4. Incentive Fee – applicable if this is a cost plus fixed incentive fee order | 52.216-10 |
| 5. Cost Contract – No Fee – applicable if this is a cost no fee order | 52.216-11 |
| 6. Cost Sharing Contract – No Fee – applicable if this is a cost sharing, no fee order | 52.216-12 |
| 7. Payment for Overtime Premiums – insert "0%" in paragraph (a) unless indicated otherwise on the face of this order | 52.222-2 |
| 8. Payments under Time-and-Materials and Labor-Hour Contracts, in which "schedule" means this order, "voucher(s)" means invoice(s), "Government" means Buyer and "Contracting Officer" means Buyer's Purchasing Representative | 52.232-7 |
| 9. Limitation of Cost (if fully funded) | 52.232-20 |
| 10. Limitation of Funds (if incrementally funded) | 52.232-22 |
| 11. Changes – Cost Reimbursement – applicable if this is a cost-reimbursement order | 52.243-2 |
| 12. Changes – Time and Material or Labor-Hours – applicable if this is a time and material or labor hour order | 52.243-3 |
| 13. Subcontracts (paragraph (h) and (i) only apply) | 52.244-2 |
| 14. Government Property (Cost Reimbursement, Time and Material or Labor Hour Contracts) "Government" means "Government and Buyer". The following is substituted for paragraph (g) in cost reimbursable orders only: "Seller shall return all Government-furnished property in as good condition as when received, except for reasonable wear and tear for use of the property in accordance with the provisions hereof" | 52.245-5 |
| 15. Inspection of Supplies (Cost Reimbursement) – "Contracting Officer" means "Buyer's Purchasing Representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed acceptable by the Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government or Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government. | 52.246-3 |
| 16. Inspection of Services (Cost Reimbursement) – "Contracting Officer" means "Buyer's Purchasing Representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed acceptable by the Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government. | 52.246-5 |
| 17. Inspection of Time and Material and Labor Hour – "Contracting Officer" means "Buyer's Purchasing Representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed acceptable by the Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government. | 52.246-6 |
| 18. Termination (Cost Reimbursement) – "Government" means "Buyer" and "Contracting Officer" means "Buyer's Purchasing Representative". In paragraph (d) change "15 days" and "45 days" to "30 days" and "90 days", respectively. In paragraph (e) change "1 year" to "six months". (NOTE: ALT IV is applicable to time and material or labor hour orders.) | 52.249-6 |
| 19. Excusable Delay | 52.249-14 |
2. Certifications
- The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.
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| A. Certification and Disclosure regarding Payment to Influence Certain Federal Transactions (Over \$100,000) | 52.203-11 |
| B. Certification regarding Debarment, Suspension, or Proposed Debarment and Other Responsibility Matters (over \$100,000) | 52.209-5 |
| C. Previous Contracts and compliance Reports (Over \$10,000) | 52.222-22 |
| D. Affirmative Action Compliance (Over \$10,000) | 52.222-25 |
| E. Certification of Toxic Chemical Release Reporting (Over \$100,000) | 52.223-13 |
| F. Certificate of Independent Price Determination | 52.203-2 |
| G. Representation of Limited Rights and Restricted Software | 52.227-15 |
3. Additional Clauses
- A. COST ACCOUNTING STANDARDS (Applicable if over \$500,000 unless otherwise exempt)
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| Cost Accounting Standards | 52.230-2 |
| Disclosure and Consistency of Cost Accounting Standards | 52.230-3 |
| Cost Accounting Standards – Educational Institutions | 52.230-5 |
| Administration of Cost Accounting Standards | 52.230-6 |
- Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting Cost Accounting Standards, FAR 52.230-2 and Administration of Cost Accounting Standards, FAR 52.230-6, provided Seller shall not be required to disclose to Buyer such communications containing information which is legally privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-5, or 52.230-6, Paragraph (b) is deleted in each of the foregoing clauses.
- B. TRUTH IN NEGOTIATIONS
- Cost or Pricing Data
- Unless exempt, Seller shall submit FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.
1. Indemnification
- If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost of pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction.
- The phrase "Cost or Pricing Data" as used herein shall be deemed to include, but not be limited to, any such data which related to a lower tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this purchase order in support of its cost estimate.
- If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:
- Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.
2. Cost or Pricing Data for Changes.
- Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.
- When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.
4. Disputes – Government Contracts
- Any reference to the "Disputes Clause" in any applicable FAR Clause contained herein shall mean this paragraph, Disputes – Government Contracts.
- A. Any dispute arising under this Purchase Order relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with Paragraph (B) below. All other disputes will be resolved by the Section 6, Disputes in the General Terms and Conditions of Purchase.
- B. Notwithstanding any other provisions in this Purchase Order, any decision of the Contracting Officer under the prime contract which binds Buyer Seller shall bind both Buyer and Seller to the extent that it relates to this Purchase Order, provided that:
- The Buyer notifies with reasonable promptness the Seller of such decision and
 - The Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
 - If Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.
- C. Any decision upon such appeal, when final, shall be binding upon the Seller.
- D. The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer
- E. The Seller shall indemnify and save harmless from any and all liability of any kind incurred by or imputed to Buyer under Section 5. "Fraudulent Claims," of the Contract Disputes Act of 1978, as amended, or any other law, if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.
5. Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this Purchase Order, the Seller shall proceed diligently, as directed by Buyer, with the performance of this Purchase Order.
6. Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including, but not limited to, available remedies, it deems appropriate to protect its own interest.
7. As used in this clause, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978 as amended.