



# Terms & Conditions for Commercial Item Purchases Under U.S. Government Contracts

## INCORPORATION OF FAR and DFARS CLAUSES

The following terms and conditions apply to purchase orders, subcontracts, or other applicable agreements issued in support of a US Government contract:

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The Seller agrees to flow down all applicable FAR and DFARS clauses to its lowest tier suppliers/subcontractors.

## DEFINITIONS

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Purchase Order (PO).
3. Substitute "Buyer" for "Government" or "United States".
4. "Contracting Officer" shall mean the Buyer or Contract Specialist/Administrator.
5. "Contractor" or "Offeror" means the SELLER, acting as (first tier) subcontractor to Buyer.
6. "Prime Contract" means the contract between Buyer and the US Government or between Buyer and its higher-tier contractor who has a contract with the US Government.
7. "Subcontract" means any contract placed by the Buyer or lower-tier subcontractors under a US Government Prime Contract.

## DEBARMENT OR SUSPENSION

Seller, by signing any Purchase Order into which these terms and conditions are incorporated, certifies that, as of the date of award, seller, or its principals, is not currently debarred, suspended, or proposed for debarment by the Federal Government.

## AMENDMENTS REQUIRED BY THE PRIME CONTRACT

Seller agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

## EQUAL OPPORTUNITY

If the Purchase Order exceeds \$10,000, 41 CFR 60-741.5(a) is hereby incorporated. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

If the Purchase Order value is \$100,000 or more, 41 CFR 60-300.5(a) is hereby incorporated. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

## PRESERVATION OF THE US GOVERNMENT'S RIGHTS

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) to which the US Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor's use of such Furnished Items in support of other US Government prime contracts.

## FLOWDOWN

Seller shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFARS.

### FAR

- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems
- 52.219-8 Utilization of Small Business Concerns
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-36 Equal Opportunity for Workers With Disabilities
- 52.222-41 Service Contract Act of 1965
- 52.222-50 Combating Trafficking in Persons
- 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
- 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements
- 52.222-54 Employment Eligibility Verification
- 52.222-55 Minimum Wages Under Executive Order 13658 (if Service Contract Act applies)
- 52.222-62 Paid Sick Leave Under Executive Order 13706
- 52.224-3 Privacy Training
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors
- 52.244-6 Subcontracts for Commercial Items
- 52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels

#### POs Greater than \$10,000

- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act

#### POs Greater than \$15,000

- 52.222-36 Affirmative Action for Workers with Disabilities

#### POs Greater than \$30,000

- 52.204-10 Reporting Executive compensation and First-Tier Subcontract Awards

#### POs Greater than \$150,000

- 52.203-6 Restrictions on Subcontractor Sales to the Government
- 52.222-17 Nondisplacement of Qualified Workers
- 52.222-35 Equal Opportunities for Veterans
- 52.222-37 Employment Reports on Veterans

#### POs Greater than \$500,000

- 52.222-60 -- Paycheck Transparency (Executive Order 13673)

#### POs Greater than \$700,000

- 52.219-9 Small Business Subcontracting Plan (DEVIATION 2016-O0009)

#### POs Greater than \$5,500,000

- 52.203-13 Contractor Code of Business Ethics and Conduct

### DFARS

- 252.204-7000 Disclosure of Information
- 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
- 252.211-7003 Item Unique Identification and Valuation.
- 252.211-7008 Use of Government-Assigned Serial Numbers
- 252.215-7008 Only One Offer
- 252.223-7008 Prohibition of Hexavalent Chromium
- 252.225-7001 Buy American Act and Balance of Payments Program
- 252.225-7008 Restriction on Acquisition of Specialty Metals
- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals
  - (1) Modify paragraph (c)(6) of this clause as necessary to facilitate management of the minimal content exception;
  - (2) Exclude paragraph (d) and (e)(1) of this clause
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments

252.225-7038	Restriction on Acquisition of Air Circuit Breakers
252.227-7013	Rights in Technical Data--Noncommercial Items
252.227-7015	Technical Data-Commercial Items
252.227-7037	Validation of Restrictive Markings on Technical Data
252.239-7018	Supply Chain Risk
252.244-7000	Subcontracts for Commercial Items
252.246-7003	Notification of Potential Safety Issues
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System, Sections (a) through (e)
252.246-7008	Sources of Electronic Parts
252.247-7003	Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer
252.247-7023	Transportation of Supplies by Sea (as applicable per para. h)
252.247-7024	Notification of Transportation of Supplies by Sea

**POs Greater than \$150,000**

- 252.225-7012 Preference for Certain Domestic Commodities
- 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools

**POs Greater than \$500,000**

- 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

**POs Greater than \$700,000**

- 252.219-7003 Small Business Subcontracting Plan
  - If the subcontract (except subcontracts to small business concerns) exceed \$650,000 (\$1,500,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- 252.219-7004 Small Business Subcontracting Plan (Test Program)
  - If the subcontract (except subcontracts to small business concerns) exceed \$650,000 (\$1,500,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

**A. Termination for Convenience (FAR 52.212-4 (1))**

The Buyer reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed before the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer using its standard record keeping system, having resulted from the termination. The Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

This clause will be implemented only in the event Buyer is terminated, for any reason, under the terms of the prime contract.

**B. Stop Work Order (FAR 52.242-15)**

Buyer reserves the right to direct Seller to stop work in accordance with the provisions of this clause. This may be exercised at the sole Discretion of the Buyer. Rights of the seller shall be as specified in the clause.

**Federal Funding Accountability and Transparency Act (FFATA)**

In situations in which Buyer is a prime contractor to the U.S. Government, Buyer may be required to comply with the Federal Funding Accountability and Transparency Act (FFATA) as required in FAR 52.204-10 – Reporting Executive Compensation and First-Tier Subcontract Awards. In such situations, Seller shall provide the executive compensation information requested and required by the Buyer to comply with FAR 52.204-10.

Seller acknowledges that Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires all reported information be made public by the Government.