

Terms & Conditions and FAR Flowdown Provisions for FFP, T&M Subcontracts Under U.S. Government Prime Contract

SECTION I: GENERAL PROVISIONS

- 1 Formation of Contract and Terms and Conditions
- 2 Applicable Laws
- 3 Assignment and Subcontracting
- 4 Communication with CME Customer
- 5 Contract Direction
- 6 Definitions
- 7 Disputes
- 8 Export Control
- 9 Extras
- 10 Furnished Property
- 11 Gratuities and Kickbacks
- 12 Indemnification
- 13 Independent Contractor Relationship
- 14 Information of CME
- 15 Information of Seller
- 16 Insurance and Liability to Third Parties
- 17 Intellectual Property Infringement
- 18 Inspection
- 19 Language Standards
- 20 New Materials
- 21 Non-solicitation of Employees
- 22 Packing and Shipment
- 23 Parts Obsolescence
- 24 Payments – Fixed-Price Task Orders
- 25 Payments, Taxes, and Duties
- 26 Precedence
- 27 Prices
- 28 Priority Rating
- 29 Quality Control System
- 30 Release of Information
- 31 Source Surveillance
- 32 Subcontracts
- 33 Survivability
- 34 Timely Performance
- 35 Waiver, Approval, and Remedies
- 36 Warranty
- 37 Notice Clauses
- 38 Entire Agreement

SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS

- A. Incorporation of FAR and DFARS Clauses
- B. Government Subcontract
- C. Notes
- D. Amendments Required by Prime Contract
- E. FAR Flowdown Clauses
- F. DFARS Flowdown Clauses
- G. Certifications and Representations

SECTION III: ADDITIONAL FLOWDOWN PROVISIONS

- 1 Hours of Work and Overtime
- 2 Organizational Conflict of Interest
- 3 FAR 52.228-3—Workers' Compensation Insurance (Defense Base Act) (April 1984)
- 4 52.7106—Use of Government Information Technology (IT) Property (September 2001)
- 5 52.7043—Standard Practice for Commercial Packaging (April 1999)
- 6 52.6115—Material Inspection and Receiving Reports (DD Form 250) DFARS (April 1999), Appendix F: 401 Distribution

SECTION I: GENERAL PROVISIONS

1. Formation of Contract and Terms and Conditions

- (a) This Contract is CME's offer to SELLER. SELLER's signature on the Contract, acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract. SELLER's acceptance of this Contract creates a binding Contract between CME and SELLER, which shall be governed by the provisions of this Contract.
- (b) This Contract and/or any signed Non-disclosure Agreement signed prior to or subsequently to the issue of a Contract or these General Provisions (or variation therefrom concerning the protection of intellectual property) integrates, merges, and supersedes any prior offers, negotia-

tions, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

- (c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected by CME and have no effect unless accepted in writing by CME.**

2. Applicable Laws

- (a) This Contract shall be governed by the laws of the state of Florida excluding its choice of laws rules;
 - (1) except that any provision in this Contract that is
 - (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR), (ii) incorporated in full text or by reference from any agency regulation that implements or supple-

ments the FAR, or (iii) substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contracts Appeals, and quasi-judicial agencies of the Federal Government.

- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.
- (2) If, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, (i) CME's contract price or fee is reduced; (ii) CME's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on CME; or (iv) CME incurs any other costs or damages; CME may proceed as provided for in (4) below.
- (3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon CME's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on CME's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or (v) if the U.S. Government alleges any of the foregoing, and, as a result, (1) CME's contract price or fee is reduced; (2) CME's costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on CME; or (4) CME incurs any other costs or damages; CME may proceed as provided for in (4) below.
- (4) If any of the circumstances identified in (2) and (3) above occur, CME may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.
- (5) These rights and obligations shall survive the termination or completion of this Contract.
- (c) In particular, if the Work is to be shipped to or performed in the United States:
 - (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to CME hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (2) SELLER shall provide to CME with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act (OSHA) of 1970 and regulations promulgated thereunder, or the state-approved counterpart to OSHA.

3. Assignment and Subcontracting

- (a) Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by CME. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if CME is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of CME against SELLER. CME shall have the right to make settlements and adjustments in price with SELLER without notice to the assignee.
- (b) Without CME's written consent, SELLER will not subcontract for the design, development, or procurement of any substantial portion of goods or services under this contract. This limitation does not apply to SELLER's purchases of standard commercial supplies or raw materials.
- (c) In no event shall SELLER furnish to any assignee any part of this contract that is marked "Top Secret," "Secret," or "Confidential."

4. Communication with CME Customer

- (a) CME shall be solely responsible for all liaison and coordination with the CME customer, including the U.S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.
- (b) Unless otherwise directed in writing by the authorized CME Procurement Representative, all documentation requiring submittal to, or action by, the government or the Contracting Officer shall be routed to, or through, the CME Procurement Representative, or as otherwise permitted by this Contract.

5. Contract Direction

- (a) Only the CME Procurement, Contracts Representative, or CME legal counsel has authority to amend this Contract. Such amendments must be in writing.
- (b) CME engineering and technical personnel may render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the **Changes** clause of this Contract (FAR 52.243-1) and shall not be the basis for equitable adjustment.
- (c) Action or direction by any CME customer shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.
- (d) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the CME Procurement Representative.
- (e) Buyer may make changes in the drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any item at any time. If such changes result in delay or an increase or decrease in expense to Seller an equitable adjustment of price and delivery schedule will be made. Any claims for adjustment under this paragraph shall be conclusively deemed waived unless asserted in writing within 30 days of receipt of change notice by Seller. Changes by Seller in prices, delivery dates or the Buyer in writing must approve other terms and conditions of this purchase.

6. Definitions

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, (e.g., PO, Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "CME" means Custom Manufacturing & Engineering, Incorporated; and/or any entity to which CME assigns all rights and obligations as a result of transfer, sale, or merger of some or substantially all of the company's assets.
- (d) "CME Procurement Representative" means the person authorized by CME's cognizant procurement organization to administer this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (f) "SELLER" means the Party identified on the title page of the Contract, with whom CME is contracting.
- (g) "Buyer" means Custom Manufacturing & Engineering, Incorporated.
- (h) "Work" means all required articles, materials, supplies, goods, product/s, and services constituting the subject matter of this Contract.
- (i) "Contracts Representative" means the person authorized by CME's cognizant of the contracts organization to administer this Contract.
- (j) "CME legal counsel" means the person authorized by CME to represent them contractual and/or legal matters or CME's In House Counsel.

7. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, excluding Intellectual Property or a Non-disclosure agreements or variation thereof, shall be settled by arbitration under the rules of the American Arbitration Association. The place of the arbitration shall be located in Hillsborough County, Florida. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and nonappealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.
- (b) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or

scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.

- (c) No action at law or in equity may be commenced by SELLER under or arising from this Contract unless it is brought within one year after the accrual of the cause of action upon which the claim is based, regardless of whether SELLER knew or should have known of the accrual of any such cause of action.
- (d) Notwithstanding the foregoing, in the event of a breach or threatened breach by SELLER under the **Information of CME** or **Intellectual Property** provisions of this Contract or any Non-disclosure Agreement (or variation -therefrom concerning the protection of intellectual property), CME may forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.
- (e) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the CME Procurement Representative.

8. Export Control Compliance for Foreign Persons

- (a) SELLER agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. SELLER shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. SELLER shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered SELLER under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have a valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.
- (d) SELLER further certifies that all SELLER employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in

the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).

- (e) SELLER agrees to notify CME if any deliverable Work under this Contract is restricted by export control laws or regulations.
- (f) SELLER shall immediately notify the CME Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At CME's request, SELLER will provide CME with all data CME may need to apply for and obtain an Export License or applicable License Exception.

9. Extras

Work shall not be supplied in excess of quantities specified in the Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

10. Furnished Property

- (a) CME may provide to SELLER property owned by either CME or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall be retained by CME or its customer. SELLER shall clearly mark (if not already marked) all Furnished Property to show ownership.
- (c) At CME's request or at completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by CME.
- (d) With respect to government-furnished property, or property to which the government may take title under this Contract:
 - (1) For fixed-price orders, the clause at FAR 52.245-2 (December 1989) shall apply. Said clause is incorporated by reference, except as used therein "Government" means "CME" except in the phrases "Government-Furnished Property" and "Government Property," and in references to government title to property. "Contracting Officer" means "CME."
 - (2) For time-and-material orders, the clause at FAR 52.245-5 (January 1986) shall apply and is incorporated by reference, except for paragraph (g)(1) which is deleted in its entirety and replaced by: Except for reasonable wear and tear, SELLER assumes all risk of loss, destruction, or damage of Furnished Property while in SELLER's possession, custody, or control. Upon request, SELLER shall provide CME with adequate proof of insurance against such risk of loss. SELLER shall promptly notify CME of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

In FAR 52.245-5, "Government" means "CME" except in the phrases "Government-Furnished Property" and "Government Property," and in references to government title to property. "Contracting Officer" means "CME."

- (3) SELLER shall provide to CME immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the government of its property control system.

11. Gratuities and Kickbacks

- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER to any employee of CME with a view toward securing favorable treatment as a supplier.
- (b) **By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 5158), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.**

12. Indemnification

- (a) The SELLER shall indemnify CME against all liability that may result from any claim, action, or suit by any person, based on any alleged injury to or death of any person or damage to or loss of any property that may occur or that may be alleged to have been caused by the SELLER in the course of performance of this Contract by the SELLER. The SELLER shall pay all charges of attorneys in connection therewith and, if any judgment shall be rendered against CME in any such action or actions, the SELLER shall satisfy and discharge the same without cost or expense to CME. However, his indemnity shall not apply to claims, actions, or suits resulting from CME's negligence.
- (b) CME shall indemnify the SELLER against all liability that may result from any claim, action, or suit by any person, based on any alleged injury to or death of any person or damage to or loss of any property that may occur or that may be alleged to have been caused by CME in the course of performance of this Contract. CME shall pay all charges of attorneys in connection therewith and, if any judgment shall be rendered against the SELLER in any such action or actions, CME shall satisfy and discharge the same without cost or expense to the SELLER.

13. Independent Contractor Relationship

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively, without any relation whatsoever to CME, and shall not be entitled to participate in or receive any of CME's employee benefits.
- (b) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all taxable expenses of litigation and settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, relating in any way to or affecting the performance of any of its obligations under this Contract.

14. Information of CME

Information provided by CME to SELLER remains the property of CME. SELLER agrees to comply with the terms of any confidential disclosure agreement with CME and to comply with all proprietary information markings and restrictive legends applied by CME to anything provided hereunder to SELLER. SELLER

agrees not to use any CME-provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of CME.

15. Information of SELLER

SELLER shall not provide any proprietary information to CME without prior execution by CME of a confidential disclosure agreement.

16. Insurance and Liability to Third Parties

In the event that SELLER, its employees, agents, or subcontractors enter CME's or its customer's premises for any reason in connection with this Contract, SELLER, as well as its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as CME may require, as stated in the contract schedule, and shall comply with all site requirements. Such insurance shall be written through a licensed carrier, with a financial rating of no less than A-, in the respective state of operation and shall meet all legal minimum requirements of same state. SELLER shall indemnify and hold harmless CME, its officers, employees, and agents from any and all losses, costs, claims, causes of action, damages, liabilities, and expenses, including (but not limited to) attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier. SELLER shall provide CME thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a Certificate of Insurance showing SELLER's compliance with these requirements. SELLER shall name CME as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of CME and is not contributory with any insurance which CME may carry.

17. Intellectual Property Infringement

SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify, and hold harmless CME and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based on a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

18. Inspection

Seller agrees to permit the Buyer's inspectors to have access to the Seller's plant at all reasonable times for the purpose of inspecting any items set forth on this order or work in process for production of such items. All items are subject to final inspection and approval at Buyer's plant or other place as designated by Buyer. Such inspection shall be made within a reasonable time. After delivery, irrespective of the date of payment, Buyer may return rejected items at Seller's expense. Seller shall not replace items returned as defective unless so directed by Buyer in writing.

19. Language and Standards

All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and work shall use the units of U.S. standard weights and measures.

20. New Materials

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

21. Non-solicitation of Employees

For a period of two years or the duration of the program, whichever may be longer, after the date hereof, no party shall solicit for hire, or hire as a result of such solicitation any employee, except with the other party's express written permission. The terms "solicit" and "solicitation" shall not include any general solicitation not specifically directed to the other party's employees.

22. Packing and Shipment

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.
- (b) All transportation costs and shipping damage incurred while submitting parts for shipment or repair and/or replacement are the responsibility of SELLER. Any damage during shipping of work to CME on initial purchase or for repair and/or replacement through the freight delivery company is not the responsibility of CME. SELLER shall at its own cost repair and/or replace product or work which was damaged while being shipped to CME.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the CME contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) For Work shipped within the United States, unless otherwise specified, delivery shall be FOB Destination. For Work imported into the United States, unless otherwise specified, delivery shall be DDP CME's facility indicated on the title page of the Contract in accordance with *INCOTERMS 2000*.

23. Parts Obsolescence

CME may desire to place additional orders for items purchased hereunder. SELLER shall provide CME with a Last Time Buy Notice at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

24. Payments—Fixed-Price Orders

For fixed-price orders, CME shall pay the SELLER, upon submission of invoices approved by CME, a lump sum on completion of work, or performance-based payments for achievement

of performance events as specified in the order, or otherwise as specified by CME in the order. Either CME or SELLER at CME's discretion may propose dollar values, and all such values shall have a reasonable relationship to the value of the work performed.

25. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) CME's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. CME shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the Parties.
- (b) Payment shall be deemed to have been made as of the date of CME's mailed payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges or exactions for which CME has furnished a valid exemption certificate or other evidence of exemption.
- (d) All taxes, assessments and similar charges levied with respect to or upon any such products or Work owned by CME while in SELLER's possession or control, and for which no exemption is available, shall be borne by SELLER.
- (e) The prices stated in the contract are firm, fixed prices in United States dollars.

26. Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement or contract, such as corporate, sector, or blanket agreements; (3) these General Provisions; and (4) Statement of Work.

27. Prices

Prices as specified in this order are those agreed upon and are not subject to increase, unless specifically authorized by a written amendment to this order.

28. Priority Rating

If so identified, this Contract is a "rated order," certified for national defense use, and the SELLER shall follow all the requirements of the *Defense Priorities and Allocation System Regulation* (15 C.F.R. Part 700).

29. Quality Control System

Unless this Contract contains other specific quality requirements,

- (a) SELLER shall provide and maintain a quality control system to an industry-recognized quality standard for the Work covered by this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and made available to CME and its customers during the performance of this Contract and for such longer periods as may be specified.

30. Release of Information

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of CME.

31. Source Surveillance

In addition to inspections as otherwise provided in this Contract, and at no increase in Contract price, CME may assign product assurance representatives to SELLER's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. SELLER likewise shall reserve such right to CME with respect to SELLER's lower-tier subcontractors. If such examination is made, SELLER shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment, and unescorted access (except in areas where proprietary processes or data are located, in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity.

32. Subcontracts

- (a) If this Contract is primarily for the purpose of furnishing services, no subcontract shall be made by the SELLER with any other Party for furnishing all or substantially all of the Work or services herein contracted for without the advance written approval of CME; however, this provision shall not be construed to require the approval of contracts of employment between the SELLER and personnel assigned for services hereunder.
- (b) The SELLER shall give CME immediate written notice of any action or suit filed and prompt notice of any claim made against the SELLER by any subcontractor or vendor that, in the opinion of the SELLER, may result in litigation related in any way to this Contract, with respect to which the SELLER may be entitled to reimbursement from CME.
- (c) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost reimbursement, lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4) (formerly 15.903(d)) of the FAR.

33. Survivability

If this Contract expires, is completed, or is terminated for default or convenience, SELLER shall not be relieved of those obligations contained in this Contract for the following provisions:

- (a) Applicable Laws, Clause No. 2 Export Control, Clause No. 8 Independent Contractor Relationship, Clause No. 13 Information of CME, Clause No. 14 Insurance or Entry on CME Property, Clause No. 16 Intellectual Property Infringement, Clause No. 17 Release of Information, Clause No. 29, Warranty, Clause No. 35

- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

34. Timely Performance

- (a) Time is of the essence in this Contract. SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by CME, CME may store, at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall promptly notify CME, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless CME has given prior written consent.
- (e) Seller shall follow the delivery schedule shown on this order and shall not make deliveries later or substantially earlier than dates shown. If items are shipped substantially in advance of schedule delivery dates, Buyer may return them at Seller's expense. If Seller exercises due care by taking all reasonable steps to protect items prior to event, Seller shall not be liable for delays in delivery due to Acts of God. If Seller does not adhere to the delivery schedule, Buyer may either agree to a revise delivery schedule or terminate this order without liability to Buyer. Seller shall notify Buyer promptly of any delays or of any actual or potential labor dispute, which is delaying or threatens to delay the timely performance of this purchase order. Such notice shall include all relevant information with respect to such dispute. Unless otherwise specified, all sales are DDP¹ CME (2904 44th Avenue North, St. Petersburg, Florida 33714).

35. Waiver, Approval, and Remedies

- (a) Failure by CME to enforce any provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of CME thereafter to enforce each and every such provisions.
- (b) CME's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of CME in this Contract are in addition to any other rights and remedies provided by law or in equity.

36. Warranty

- (a) In addition to SELLER's standard warranty, SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and

¹ Incoterm as defined by the most recent release and/or publication by the International Chamber of Commerce (ICC).

workmanship. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to CME and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after CME's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity of the Work appears within that time, SELLER shall promptly repair, replace, or reperform the Work, at CME's option. Transportation of replacement Work, return of nonconforming Work, and repeat performance of Work shall be at SELLER's expense. Work required to be corrected or replaced shall be subject to this provision and the **Inspection and Acceptance** provision of this Contract (FAR 52.246-2 and 52.246-4) in the same manner and to the same extent as Work originally delivered under this Contract. If repair, replacement, or reperformance of Work is not timely, CME may elect to return the nonconforming Work or repair, replace Work, or reprocure the Work at SELLER's expense.

- (b) SELLER further warrants that all software, firmware, and hardware (products) provided by SELLER, having date-dependent functionality containing or calling on a calendar function to process date and time data, will accurately process the date and time data (including, but not limited to, inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transforming such dates and data).
 - (1) In the event of a discovery of any date-dependent functionality noncompliance, the discovering party shall notify the other party within five (5) business days. At CME's option, the noncompliant products shall be repaired or replaced by SELLER within ten (10) business days of such notice at no cost to CME. The date-dependent functionality warranty shall run to CME and its successors, assigns, and customers, and shall extend indefinitely after CME's final acceptance.
 - (2) Nothing in this provision shall be construed to limit any other rights under this Contract, at law or in equity that CME may have with respect to date-dependent functionality compliance.

37. Notice Clauses:

- (a) The preferred points of contact with respect to the transmission of purchase orders or changes hereunder are:

CME Procurement Department
2904 44th Avenue North
St. Petersburg, FL 33714
Fax: (727) 541-8822

Each party may change its designation by written notice to the other. All cancellations should first be sent to the CME Procurement Department with a copy being sent to the CME Legal Department at the same address above. Any changes to the Terms & Conditions must be in writing; signed and dated by the CME Legal Department. Terms & Conditions cannot be orally modified, even if relied upon or stated by representative in CME Procurement Department.

38. Entire Agreement

This Agreement or any signed Non-disclosure Agreement, signed prior to or subsequently to the issue of a Contract or these Terms & Conditions (or variation therefrom concerning the protection of intellectual property) contain the entire under-

standing between the Parties relative to the protection of Proprietary Information to be exchanged between the parties, and supersedes all prior oral and collateral communications, reports, and understandings between the Parties with respect to such purpose. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of the Parties. This Agreement shall apply in lieu of and notwithstanding any specific legend or statement associated with any Proprietary Information or material exchanged, and the duties of the Parties shall be determined exclusively by this Agreement. If any portion of this Agreement is held to be invalid, such decision shall not affect the validity of the remaining portions.

SECTION II: FAR FLOWDOWN PROVISIONS

A. Incorporation of FAR Clauses

The Federal Acquisition Regulation (FAR) clauses 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, during the performance of this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

B. Government Subcontract

This Contract is entered into by the Parties in support of a U.S. Government contract.

As used in the FAR and DFARS clauses referenced below and otherwise in this Contract:

1. "CONTRACTOR" means the SELLER, as defined previously in the **Definitions** provision of this document, acting as the immediate (first-tier) subcontractor to CME.
2. "Prime Contract" means the contract between CME and the U.S. Government or between CME and its higher-tier CONTRACTOR who has a contract with the U.S. Government.
3. "Contract" means this Contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. Notes

1. Substitute "CME" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "CME Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and CME" after "Government" or "Contracting Officer," as appropriate, throughout this clause.
4. Insert "or CME" after "Government" throughout this clause.

5. Communication or notification required under this clause from or to the CONTRACTOR, and to or from the Contracting Officer shall be through CME.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for CME's government Prime Contract under which this Contract is entered.

D. Amendments Required by Prime Contract

CONTRACTOR agrees that upon the request of CME it will negotiate in good faith with CME relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as CME 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 estimated 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.

E. FAR Flowdown Clauses

REFERENCE	TITLE
------------------	--------------

1. The following FAR clauses apply to this Contract:

- | | |
|---------------|---|
| (a) 52.211-5 | Material Requirements (August 2000) (See Note 2) |
| (b) 52.219-8 | Utilization of Small Business Concerns (October 2000) |
| (c) 52.222-6 | Davis Bacon Act (February 1995) (See Notes 5 and 6.) |
| (d) 52.222-20 | Walsh-Healey Public Contracts Act (December 1996) |
| (e) 52.222-26 | Equal Opportunity (February 1999) (Only subparagraphs (b)(1)-(11) apply.) |
| (f) 52.222-41 | Service Contract Act of 1965, As Amended (May 1989) (See Note 5.) |
| (g) 52.222-43 | Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple-Year and Option Contracts) (May 1989) (See Notes 5 and 6.) |
| (h) 52.222-47 | Service Contract Act (SCA) Minimum Wages and Fringe Benefits (May 1989) (See Notes 5 and 6.) |
| (i) 52.222-49 | Service Contract Act—Place of Performance Unknown (May 1989) (See Notes 5 and 6.) |
| (j) 52.223-11 | Ozone-Depleting Substances (May 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.) |

- (k) 52.225-13 Restrictions on Certain Foreign Purchases (July 2000) (In paragraph (a), see Notes 5 and 6.)
- (l) 52.229-6 Taxes – Foreign Fixed-Price Contracts (January 1991) (See Notes 1 and 2.)
- (m) 52.227-3 Patent Indemnity (Alternate II) (April 1984) (See Note 3.)
- (n) 52.239-1 Privacy or Security Safeguards (August 1996) (See Notes 2 and 3.)
- (o) 52.242-13 Bankruptcy (July 1995) (See Note 2.)
- (p) 52.242-14 Suspension of Work (April 1984) (See Notes 2 and 4.)
- (q) 52.242-15 Stop-Work Order (August 1989) (See Notes 1 and 2.)
- (r) 52.243-1 Changes – Fixed Price (August 1987) (See Notes 1 and 2.) Alternate II (April 1984) Alternate IV (April 1984) Alternate I (April 1984)
- (s) 52.243-3 Changes – Time-and-Material or Labor-Hours (September 2000) (See Notes 1 and 2)
- (t) 52.243-4 Changes (August 1987) See Notes 1 and 2.)
- (u) 52.244-6 Subcontracts for Commercial Items (May 2001)
- (v) 52.246-2 Inspection of Supplies – Fixed-Price (August 1996) (The government also may exercise any of CME's inspection rights under this clause. See Notes 1 and 2.)
- (w) 52.246-4 Inspection of Services – Fixed-Price (August 1996) (The government also may exercise any of CME's inspection rights under this clause. See Note 1.)
- (x) 52.246-6 Inspection – Time-and-Material and Labor-Hour (May 2001) (The government also may exercise any of CME's inspection rights under this clause. See Note 1.)
- (y) 52.246-7 Inspection of Research and Development – Fixed-Price (August 1996) (The government also may exercise any of CME's inspection rights under this clause. See Note 1.)
- (z) 52.246-15 Certificate of Conformance (April 1984) (See Notes 2 and 3.)
- (aa) 52.249-2 Termination for Convenience of the Government (Fixed-Price) (September 1996) (Applicable only for fixed-price

contracts. See Notes 1 and 2. "Government" and "Contracting Officer" mean "CME" except in paragraph (n), where "Government" means CME and the "Government" and "Contracting Officer" means "CME" or the "Contracting Officer." In paragraph (c), "120 days" is changed to "60 days." In paragraph (d), "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e), "1 year" is changed to "6 months." Paragraph (j) is deleted. In paragraph (l), "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

(bb) 52.249-6 Termination (Cost-Reimbursement) (September 1996) and Alternate IV (September 1996). Alternate IV is specific to and applicable only for time-and-materials contracts. See Notes 1 and 2. In paragraph (d), "120 days" is changed to "60 days." In paragraph (e), "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (f), "1 year" is changed to "6 months." Paragraph (j) is deleted. In paragraph (l) of Alternate IV, "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

(cc) 52.249-8 Default (Fixed-Price Supply and Service) (April 1984) (Applicable only for fixed-price contracts. See Notes 1 and 2, except Note 1 is not applicable to paragraph (e). Timely performance is a material element of this Contract.)

(dd) 52.249-9 Default (Fixed-Price Research and Development) (April 1984) (See Notes 1 and 2)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

(a) 52.222-35 Affirmative Action for Disabled Veterans and Vietnam War Veterans (December 2001)

(b) 52.222-36 Affirmative Action for Workers with disabilities (December 2001)

(c) 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (December 2001)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

(a) 52.203-6 Restrictions on Subcontractor Sales to the Government (July 1995)

(b) 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (January 1997) (See Note 2. In paragraph (a) (ii), the "head of the contracting activity" means "CME.")

(c) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (January 1997) (See Note 2. In paragraph (c) change "a prime contractor's" to "SELLER's.")

(d) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 1997) (see Note 5.)

(e) 52.215-2 Audit and Records-Negotiation (June 1999) (Insert "and the CME Purchasing Representative" after "the Contracting

	Officer or representatives of the Contracting Officer" or after "...representatives of the Contracting Officer who are employees of the government," where indicated throughout the clause.)	(e) 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (October 1997) (See Note 2.)
(f) 52.215-14	Integrity of Unit Prices (October 1997) (Delete paragraph (b) of the clause.)	(f) 52.223-3	Hazardous Material Identification and Material Safety Data (January 1997) (Applicable if the Contract involves hazardous material. See Notes 2 and 3.)
(g) 52.227-1	Authorization and Consent (July 1995) and Alternate I (April 1984) (In paragraph (a)(1), see Note 4, and in paragraph (a)(2)(ii), see Note 2.)	(g) 52.223-7	Notice of Radioactive Materials (January 1997) (Applicable to Work containing covered radioactive material. Insert "30" in the blank; See Notes 1 and 2.)
(h) 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (August 1996) (See Notes 2 and 4.)	(h) 52.224-1	Privacy Act Notification (April 1984) (Applicable when the Contract requires design, development, or operation of a system of records on individuals.)
4. The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$550,000:		(i) 52.224-2	Privacy Act (April 1984) (Applicable when the Contract requires design, development, or operation of a system of records on individuals.)
(a) 52.219-9	Small Business Subcontracting Plan (January 2002) (Applicable if the CONTRACTOR is not a small business; see Notes 1 and 2, applicable to subparagraph (c) only; the CONTRACTOR'S subcontracting plan is incorporated herein by reference.)	(j) 52.227-9	Refund of Royalties (April 1984) (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:		(k) 52.227-11	Patent Rights – Retention by the Contractor (Short Form) (June 1997) (Applicable if CONTRACTOR is a small business or non-profit organization performing experimental or research and development (R&D) work.)
(a) 52.215-12	Subcontractor Cost or Pricing Data (October 1997) (Applicable if not otherwise exempt under FAR 15.403.)	(l) 52.227-12	Patent Rights-Retention by the Contractor (Long Form) (January 1997) (Applicable to other than a small business or nonprofit organization performing experimental or R&D work.)
(b) 52.215-13	Subcontractor Cost or Pricing Data – Modifications (October 1997) (Applicable for modifications if not otherwise exempt under FAR 2.15.403.)	(m) 52.228-5	Insurance – Work on a Government Installation (January 1997) (Applicable if Work performed on government installation. See Note 2.)
6. The following FAR clauses apply to this Contract as indicated:		(n) 52.230-2	Cost Accounting Standards (April 1998) (When referenced in the Contract, full CAS coverage applies. In subparagraphs (a)(4)(ii) and (a)(5), see Note 1. Delete paragraph (b) of the clause.)
(a) 52.204-2	Security Requirements (August 1996) (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)	(o) 52.230-6	Administration of Cost Accounting Standards (November 1999) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
(b) 52.215-10	Price Reduction for Defective Cost or Pricing Data (October 1997) (Applicable if FAR 52.215-12 applies to this Contract. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the work and final payment under this Contract.)	(p) 52.233-3	Protest After Award (August 1996) (In the event CME's customer has directed CME to stop performance of the work under the Prime Contract under which this contract is issued pursuant to FAR 33.1, CME may, by written order to SELLER, direct SELLER to stop performance of the work called for by this Contract; "30 days" means "20 days" in paragraph (b)(2); Note 1 applies except the first time it appears in paragraph (f); in paragraph (f) add "and recovers those
(c) 52.215-11	Price for Defective Cost or Pricing Data – Modifications (October 1997) (Applicable if FAR 52.215-13 applies to this Contract, and FAR 52.215-10 is not applicable. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)		
(d) 52.215-20	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (October 1997) (See Note 2.)		

- costs from CME" after "33.104(h)(1)"; See Note 2.)
- (q) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (April 1984) (Applicable if work performed on government installation. See Note 2.)
- (r) 52.245-18 Special Test Equipment (February 1993) (Applicable if this contract involves the acquisition or fabrication of special test equipment. Notice to acquire shall be through CME. See Notes 4, 5, and 6.)
- (s) 52.247-63 Preference for U.S.-Flag Air Carriers (January 1997) (Applicable if this Contract involves international air transportation.)

- (k) 252.227-7036 Declaration of Technical Data Conformity (January 1997)
- (l) 252.227-7037 Validation of Restrictive Markings on Technical Data (September 1999)
- (m) 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (December 1991) (In subparagraph (a), see Note 5; in subparagraph (b), see Note 3.)
- (n) 252.228-7006 Compliance With Spanish Laws and Insurance (June 1997) (Note 3 applies to paragraphs (b), (c), and (f). Note 2 applies to paragraphs (d) and (e). Change "15" to "10" in paragraph (d).)
- (o) 252.229-7006 Value-Added Tax Exclusion (United Kingdom) (June 1997)

F. DFARS Flowdown Clauses

If this contract is placed under a U.S. Government Department of Defense (DoD) contract, the following additional DFARS clauses apply.

REFERENCE TITLE

1. The following DFARS clauses apply to this Contract:

- (a) 252.204-7000 Disclosure of Information (December 1991) (See Notes 5 and 6.)
- (b) 252.222-7002 Compliance With Local Labor Laws (Overseas) (June 1997) (See Note 3. Paragraph (c) shall apply if and only if the Contracting Officer, through CME, approves reimbursement in writing.)
- (c) 252.225-7009 Duty-Free Entry – Qualifying Country Supplies (End-Products and Components) (August 2000) (See Note 2.)
- (d) 252.225-7010 Duty-Free Entry – Additional Provisions (August 2000)
- (e) 252.227-7013 Rights in Technical Data – Noncommercial Items (November 1995)
- (f) 252.227-7014 Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation (June 1995)
- (g) 252.227-7016 Rights in Bid or Proposal Information (June 1995)
- (h) 252.227-7027 Deferred Ordering of Technical Data or Computer Software (April 1988) (See Note 4.)
- (i) 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government (June 1995) (In this clause, the terms "contract" and "subcontract" shall not change in meaning)
- (j) 252.227-7030 Technical Data -Withholding of Payment (March 2000) (See Notes 1 and 2.)

- (p) 252.231-7000 Supplemental Cost Principles (December 1991)
- (q) 252.235-7011 Scientific or Technical Report (September 1999) (See Note 4. SELLER shall consult CME for direction on where to send final report.)
- (r) 252.242-7000 Post-Award Conference (December 1991) (See note 4)
- (s) 252.243-7002 Certification of Requests for Equitable Adjustment (March 1998) (See Note 4.)
- (t) 252.243-7001 Pricing of Contract Modifications (December 1991)
- (u) 252.246-7000 Material Inspection and Receiving Report (December 1991) (See Note 4.)
- (v) 252.246-7001 Warranty of Data (December 1991) (See Notes 2 and 5.)

2. The following DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

- (a) 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (March 1999) (In this clause, the terms "contract," "contractor," and "subcontract" shall not change in meaning; Delete paragraph g; See Note 2.)
- (b) 252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate Range Nuclear Forces (INF) Treaty (November 1995) (See Note 5.)
- (c) 252.225-7005 Identification of Expenditures In the United States (April 2002) (Applicable if the Contract is for the acquisition of (a) Supplies for use outside the United States; (b) construction to be performed outside the United States; or (c) services to be performed primarily outside the United States.)

- (d) 252.247-7023 Transportation of Supplies by Sea ((May 2002)) (See Notes 1 and 2, except for paragraph (d) which shall retain its original meaning. In paragraph (g) delete the reference to the "Prompt Payment Act.")
- 3. The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$500,000:**
- (a.) 252.225-7026 Reporting of Contract Performance Outside the United States (June 2000)
- 4. The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$1,000,000:**
- (RESERVED)
- 5. The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**
- (a) 252.215-7000 Pricing Adjustments (December 1991) (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)
- (b) 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (April 1996) (Applicable if FAR 52.219-9 applies to this Contract; delete subparagraph (g).)
- (c) 252.223-7001 Hazard Warning Labels (December 1991) (Applies if this Contract requires submission of hazardous material data sheets; see FAR 23.302(c).)
- (d) 252.223-7002 Safety Precautions for Ammunition and Explosives (May 1994) (Applicable only if the articles furnished under the Contract contain ammunition or explosives, including liquid and solid propellants. See Notes 1, 3, and 5.)
- (e) 252.223-7003 Change in Place of Performance – Ammunition and Explosives (December 1991) (Applicable if DFARS 252.223-7002 applies to this Contract. See Notes 2 and 4.)
- (f) 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (April 1993)
- (g) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (September 1999) Only applicable if this contract involves arms, ammunition, and explosives.)
- (h) 252.225-7001 Buy American Act and Balance of Payments Program (March 1998) (Substitute the DFARS clause for FAR clause 52.225-3 in all Contracts for supplies; applicable if the Work contains other than domestic components as defined by this clause)
- (i) 252.225-7008 Supplies to Be Accorded Duty-Free Entry (March 1998)
- (j) 252.225-7012 Preference for Certain Domestic Commodities (April 2002)
- (k) 252.225-7014 Preference for Domestic Specialty Metals (June 2005) Alternate I (April 2003) (Applicable if the Work to be furnished hereunder contains specialty metals.)
- (l) 252.225-7015 Preference for Domestic Hand or Measuring Tools (December 1991)
- (m) 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (December 1991)
- (n) 252.225-7031 Secondary Arab Boycott of Israel (June 1992)
- (o) 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the United States (June 1998) (Applies where CONTRACTOR will be performing or traveling outside the United States under this Contract.)
- (p) 252.227-7033 Rights In Shop Drawings (April 1966)
- (q) 252.229-7002 Customs Exemptions (Germany) (June 1997)
- (r) 252.229-7003 Tax Exemptions (Italy) (June 1997)
- (s) 252.229-7005 Tax Exemptions (Spain) (June 1997)
- (t) 252.241-7001 Government Access (December 1991)
- (u) 252.242-7005 Cost/Schedule Status Report (March 1998) (Applies to firm fixed-price task orders that are 12 months or more in duration and contain critical or significant tasks as defined by CME in the task order. The last two sentences of paragraph (g) are deleted.)
- (v) 252.245-7001 Reports of Government Property (May 1994) (Applicable if government property is provided or acquired under this Contract. CONTRACTOR shall submit its required reports to CME, not later than October 10, not withstanding anything to the contrary in this clause. See Note 5.)
- G. Certifications and Representations**
- 1. The clauses listed below contain certifications and representations that are material representations of fact upon which CME will rely in making awards to CONTRACTOR. By submitting its written offer, providing oral offers or quotations at the request of CME, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request**

for quotation (oral or written), or request for proposal or solicitation (oral or written), issued by CME. CONTRACTOR shall immediately notify CME of any change of status with regard to these certifications and representations.

2. The following clauses of the FAR are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "CME" for "Government" and "Contracting Agency" and "CME Procurement Representative" for "Contracting Officer" throughout.

(a) **FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" (April 1991).** (Applicable to solicitations and contracts exceeding \$100,000.)

- (1) The definitions and prohibitions contained in the clause under FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

- (2) CONTRACTOR certifies that to the best of its knowledge and belief that on and after December 23, 1989—

(a) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

(c) Offeror will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

- (3) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails

to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(b) **FAR 52.209-5, "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters" (April 2001).**

(c) **FAR 52.222-22, "Previous Contracts and Compliance Reports" (February 1999).**

(d) **FAR 52.222-25, "Affirmative Action Compliance" (April 1984).**

(e) **FAR 52.223-13, "Certification of Toxic Chemical Release Reporting" (October 2000).** (Applicable to competitive solicitations and POs that exceed \$100,000.)

3. Conflict of Interest

To the best of the Offeror/SELLER's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of work under this contract or agreement; or, the Offeror/SELLER has notified CME in writing of such a conflict of interest and received written authorization from CME to continue in pursuit of a contract or agreement. If in the performance of a contract or agreement with CME the Offeror/SELLER becomes aware of an actual or potential conflict of interest, the Offeror/SELLER will immediately notify the Procurement Representative responsible for the contract or agreement in question.

SECTION III: ADDITIONAL FLOWDOWN PROVISIONS

1. Hours of Work and Overtime

- A. Work within the continental limits of the United States and its possessions shall not normally exceed forty (40) hours per normal work week or shall be in accordance with SELLER's approved company policy to accommodate alternate work schedules, provided that no premium pay rates are applicable.

Work hours OCONUS shall correspond to hours worked by comparable government personnel, or in accordance with SELLER's approved company policy to accommodate alternative work schedules, provided that no premium pay rates are applicable.

- B. CME may authorize overtime in cases of extreme emergency, where delay would endanger accomplishment of essential theatre missions.

All overtime requiring the payment of premium pay rates must be negotiated and approved in advance by CME.

SCA exempt employees can work in excess of forty (40) hours per week to accommodate alternative work schedules in accordance with SELLER's approved company policy, provided that no premium pay rates are applicable. CME approved hours requiring the payment of premium pay rates shall be billed to CME at the rate negotiated in advance.

SCA nonexempt employees can work in excess of forty (40) hours per week to accommodate alternative work

schedules in accordance with SELLER's approved company policy, provided that no premium pay rates are applicable. Any work in excess of forty (40) hours per week for SCA nonexempt employees, requiring payment of premium pay rates, requires the written approval of CME. CME-approved hours requiring the payment of premium pay rates shall be billed to CME at the rate negotiated in advance

- C. Authorized holidays for SELLER personnel performing work at a government installation shall correspond with government holidays. Regular government holidays are as follows:

New Year's Day
Martin Luther King Jr.'s Birthday
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Christmas Day

2. Organizational Conflict of Interest

- A. For purposes of this clause, an organizational conflict of interest (OCI) means that a relationship exists whereby SELLER has past, present, or potential subcontracts or financial interests that either directly or indirectly relate to the work to be performed under the Contract, and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from incumbency.
- B. The SELLER warrants that, to the best of the SELLER's knowledge and belief, there are no relevant facts or circumstances concerning any past, present, or potential contracts or financial interests relating to the work to be performed, which could give rise to an OCI as defined above, or that any actual or potential OCI with respect to the work to be performed under Contract has been communicated in writing to the point of contact for contractual matters identified in this Contract.
- C. The SELLER agrees that if any actual or potential OCI arises after award, with regard to any task order or modification thereto, the SELLER will make a full disclosure in writing to the point of contact for contractual matters. This disclosure shall include a description of actions the SELLER has taken or proposes to take, after consultation with the point of contact for contractual matters, to avoid, mitigate, or neutralize the actual or potential conflict.
- D. In any event, if an OCI cannot be avoided or mitigated, the government agency via the point of contact for contractual matters reserves the right to either preclude the SELLER from participation or require the SELLER to subcontract the work to another technically qualified subcontractor, subject to the approval of the government and the point of contact for contractual matters, and at the same or less than the price, negotiated rates, or level of effort contained in the task order. In the event a difference exists between the task order's price, negotiated rates, or level of effort

and the price, rates, or level of effort required by the replacement SELLER selected, that fact shall not form the basis for an equitable price adjustment.

- E. The term SELLER herein used means the one entering into this Contract with CME, the SELLER's parent organization, if any, subsidiary, as associate, affiliate or holding corporation, or any enterprise or organization with whom it may join, hereafter in any manner whatsoever, if that organization or any of its parts seeks to bid or perform work for the U.S. Government.
- F. This clause shall be included in any subcontracts awarded under this Contract. The use of this clause in such subcontracts shall be read by substituting the word "subcontractor" for the word "SELLER" whenever the latter appears, and "SELLER" for "CME" or "point of contact for contractual matters."
- G. The SELLER agrees to thoroughly educate its employees through formal training and company policy information directives and procedures, to ensure an awareness of the legal provisions of subpart 9.5 of the FAR, and of its underlying policy and philosophy.
- H. The SELLER agrees to enter into a written agreement with all companies whose proprietary data to which SELLER shall have access, that it will protect such data from unauthorized use or disclosure as long as these data remain proprietary. The SELLER agrees to protect and safeguard the proprietary data of business, commercial, or nonprofit organizations wherein said proprietary data have been available to the SELLER either directly or indirectly in the performance of this Contract, with the same caution that a reasonable, prudent SELLER would use to safeguard highly valuable property. The SELLER further agrees not to use such data to obtain an unfair competitive advantage for itself or any other SELLER.
- I. When the application of this clause is determined by the government to be prejudicial to its best interests, it will seek a waiver of its provisions.
- J. This clause and the application of FAR 9.505 are subject to negotiation.

3. FAR 52.228-3—Workers' Compensation Insurance (Defense Base Act) (April 1984)

The SELLER shall (a) provide, before commencing performance under this contract, such workers' compensation insurance or security as the *Defense Base Act* (42 U.S.C. 1651, *et seq.*) requires, and (b) continue to maintain this insurance until performance is completed. The SELLER shall insert, in all subcontracts under this contract to which the *Defense Base Act* applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the *Defense Base Act*

4. FAR 52.228-4—Workers' Compensation and War-Hazard Insurance Overseas (Apr/1984)

- A. This paragraph applies if the SELLER employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the *Defense Base Act* (42 U.S.C. 1651, *et seq.*). On behalf of employees for whom the applicability of the *Defense Base Act* has been waived, the SELLER shall:

(1) Provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require, and

(2) Continue to maintain this insurance until performance is completed. The SELLER shall insert, in all subcontracts under this contract to which the *Defense Base Act* would apply but for the waiver, a clause similar to this paragraph A (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

B. This paragraph applies if the SELLER or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the *War Hazards Compensation Act* (42 U.S.C. 1701, *et seq.*). On behalf of employees for whom the applicability of the *Defense Base Act* (and hence that of the *War Hazards Compensation Act*) has been waived, the SELLER shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the *War Hazards Compensation Act*, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the *War Hazards Compensation Act* shall apply (e.g., the definition of war-hazard risks—*injury, death, capture, or detention as the result of a war hazard as defined in the Act—proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent*).

C. Unless the SELLER elects to assume directly the liability to subcontractor employees created by this clause, the SELLER shall insert, in all subcontracts under this contract to which the *War Hazards Compensation Act* would apply but for the waiver, a clause similar to this paragraph C (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

5. 52.7106—Use of Government Information Technology (IT) Property (September 2001)

This clause applies to orders that require or permit the SELLER to use information technology property owned by the government. The subcontractor is reminded that, in addition to the "government property" clauses included in this contract, there are substantial restrictions on the use of government property. Any property so provided shall only be used for contract performance-related purposes. For example, information resources (e.g., computers, telephones, facsimile machines) shall not be used for activities such as accessing pornographic materials or web sites, personal business, playing games, or "surfing" the internet. Prior to beginning performance under this contract, the subcontractor shall instruct each employee on the proper use of government property. As each new employee is hired, they shall also be briefed before performing work under this contract. Each employee should also be informed that use of government information resources constitutes consent to monitoring/search. A copy of the content of the briefing shall be submitted CME, who may submit it to the Contracting Officer, prior to the contract start date. A record of who was briefed, and when, shall be kept in a file that shall be made available to CME or the Contracting Officer or Contracting Officer's Representative upon request.

SELLER shall notify CME before responding directly to such government request.

6. 52.7026—Confidential or Secret Materiel/Documents – Method of Transmission (November 1996)

A. **Materiel.** SELLER shall pack materiel to conceal it properly to avoid suspicion as to contents, and to reach its destination in satisfactory condition. Internal markings or internal packaging will clearly indicate the classification. NO NOTATION TO INDICATE CLASSIFICATION WILL APPEAR ON EXTERNAL MARKINGS (EXTERIOR CONTAINERS). (See Chapter 4 of the *Industrial Security Manual for Safeguarding Classified Information* [DoD 5220.22M]).

B. **Documents.** SELLER shall enclose documents in two opaque envelopes or covers. The inner envelope or cover containing the documents being transmitted will be addressed, return addressed, and sealed. The classification of the documents being transmitted will be clearly marked on the front and back of the inner container. The classified documents will be protected from direct contact with the inner cover by a cover sheet or by folding inward. For SECRET documents, a receipt form identifying the addresser, addressee, and documents will be enclosed in the inner envelope. CONFIDENTIAL documents will be covered by a receipt only when the sender deems it necessary. The inner envelope or cover will be enclosed in an opaque outer envelope or cover. The classification markings of the inner envelope should not be detectable. The outer envelope will be addressed, return addressed, and sealed. NO CLASSIFICATION MARKINGS WILL APPEAR ON THE OUTER ENVELOPE OR COVER.

(See Chapter 5, Section 4, of the *Industrial Security Manual for Safeguarding Classified Information* [DoD 5220.22M]).

7. 52.7043—Standard Practice for Commercial Packaging (April 1999)

A. Commercial packaging of drawings, test reports, software, and other data items shall be in accordance with ASTM D 3951-98. Hardware deliverables shall also be packaged in accordance with ASTM D 3951-98. All packages shall be marked in accordance with MIL-STD-129 (a waiver-free document). Bar code markings are required in accordance with ANSI/AIM-BC1, *Uniform Symbology Specification Code 39*, and MIL-STD-129. Intermediate packaging is required to facilitate handling and inventory control whenever the size of the unit package is 64 cubic inches or less. Unit packs requiring intermediate packing shall be packed in quantities governed by the following:

- (1) Maximum of 100 unit packs per intermediate container.
- (2) Maximum net load of 40 pounds.
- (3) Maximum size of 1.5 cubic feet with at least two dimensions not exceeding 16 inches.

B. Unless otherwise specified, shipments shall be unitized into a single load that can be handled as a unit throughout the distribution system. The supplier is responsible for performing package testing as specified in ASTM D 3951-98. The government reserves the right to perform any of the tests.

C. Copies of ASTM D 3951-98 are available from the:

American Society for Testing and Materials
100 Barr Harbor Drive
West Conshohocken, PA 19248-2959.

D. Some supplies may require military packaging, depending on destination and intended use. Packaging requirements for those items will be provided with the delivery/task order.

9. 52.6115—Material Inspection and Receiving Reports (DD Form 250) DFARS (April 1999), Appendix F: 401 Distribution

A. The SELLER shall make the following distribution of DD Forms 250 wherever the order requires the SELLER to deliver items directly to the government.

CME Technical Point of Contact	One
2904 44 th Avenue North	
St. Petersburg, FL 33714	
See order	

The SELLER shall include these special distribution instructions in any subcontract hereunder where the items produced by the subcontractor are to be shipped directly to the government.