



**CUSTOM MANUFACTURING
& ENGINEERING™**

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**General T&C's for CME Purchase Order
– Standard Terms & Conditions**

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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 Proprietary Information and/or 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, negotiations, 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 an authorized party of 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 supplements 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's General Counsel has authority to amend this Contract and these Terms & Conditions and reserves the right to do so at any time in order to comply with FAR/DFAR changes, Customer Required Changes, and/or update as required by CME; SELLER agrees that changes shall not be considered material and consents to such. Such amendments must be in writing. CME's Procurement may only alter the Purchase Order
- (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 and CME General Counsel.
- (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 may be made. Any claims for adjustment under this paragraph shall be conclusively deemed waived unless asserted in writing within twenty (20) 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. However, CME Procurement Representative is limited in scope of changing the Contract (i.e. changes only to the Purchase Order).
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "CME" means Custom Manufacturing & Engineering; 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 the Purchase Order.
- (e) "CME General Counsel" means the person authorized by CME's legal department 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.
- (h) "Work" unless further defined in a provision herein, 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 General 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 (an agreement for the protection of intellectual property), shall be settled by binding arbitration under the rules of the American Arbitration Association after 10 day period to amicably resolve the matter (unless in the event of a schedule due date for delivery of product and/or work under this Contract, then SELLER shall immediately rectify and CME shall proceed forward with the Dispute without 10 day period). The place of the arbitration shall be located in Hillsborough County, Florida. The arbitrator(s) shall have direct experience in government as well as commercial contracts and the litigation process. The language to be used in the arbitral proceedings shall be English. If the amount in dispute is \$100,000 or more, CME shall have the sole decision if the arbitration shall be conducted by one or three arbitrators (even if provided for differently by the American Arbitration Association rules in effect). Each Party shall bear its own expenses of the arbitration, however, if CME files this case (to enforce these terms) or has a counter-claim for breach, then SELLER shall be solely liable for all of CME's attorneys' fees and costs in addition to their own. The fees and costs of the arbitrator(s) shall be borne equally between the Parties participating in the arbitration. The arbitrator(s) shall not award SELLER recovery of its attorney's fees and legal costs, unless a provision contained in these Terms & Conditions specifically states otherwise.
- (b) The Parties agree that discovery shall be limited to the areas/issues which identified in the claim, counter-claim, cross claim, and answer as summarized by CME in writing before or at the preliminary hearing. Additionally SELLER agrees that it shall not request during discovery or any part of the arbitration any area/issue outside of those which CME designates. In the event that SELLER claims at any time (pre-claim or at any point prior to trial/final hearing on the matter) that it is not in a position to pay any of CME's damages, CME's attorneys' fees and costs, and/or any judgment/decision reached in the matter, SELLER has put its financial condition in issue and shall immediately produce to CME (and entry of a non-disclosure and/or protective order) all independently audited (by CPA or firm) statements and all financial statements for the years in question (for any time period covering of the areas/issues identified by CME) to present; SELLER hereby waives any objection to such even in the event case law/precedent supports non-disclosure of such. For the avoidance of doubt, SELLER shall immediately produce such even in the event that statements are made after the issues are set before or at the preliminary hearing by CME.
- (c) 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 identified by CME in the immediate provision above. Any dispute regarding the relevance of discovery shall be determined by the arbitrator(s), whose determination shall be conclusive. All discovery shall be completed within forty-five (45) days following the preliminary or first hearing with the arbitrator(s) unless the Parties agree to extend in writing or are directed by the arbitrator(s).

- (d) 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.
- (e) 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 without the requirement of any bond.
- (f) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the CME Procurement Representative and/or CME General Counsel.
- (g) Judgment of the arbitrator shall be final and non-appealable 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. Unless otherwise agreed payment shall be promptly paid within thirty (30) days of final ruling/decision/judgment in the matter. Any ruling/decision/judgment shall be immediately enforceable and executable in any jurisdiction within the United States and/or nation on Earth in which the Party resides or has funds that reside; and the Parties hereby waive any objection to such.

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/technical 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 or any agency(ies) and/or subdivisions thereof. "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 technical data and/or 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. SELLER will not release technical data and/or Controlled Technology to any foreign concern or foreign person either inside or outside the United States without first obtaining the proper export authority.
- (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 and CME General Counsel 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, without additional cost(s), CME may need to apply for and obtain an Export License or applicable License Exception.
- (g) Upon completion or termination of this Contract, SELLER shall destroy or return to CME all technical data and/or Controlled Technology furnished to SELLER by CME pursuant to this Contract. At CME's election SELLER may be directed to return or destroy the data and may require SELLER to certify in writing that SELLER has complied.
- (h) SELLER shall impose these requirements, (a) through (h), suitably revised to identify the parties properly, on all of its subcontractors to which SELLER intends to furnish technical data provided by CME for use by the subcontractors in performance of the Contract/subcontracts.

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 non-acceptance 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, this 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.

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 but not limited to CME's 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. Unless otherwise governed by a Proprietary Information agreement (or variation thereof) or prior written agreement between the Parties, all work delivered and accepted by CME are considered "Works for Hire."

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 (CME's facility). 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 2010*.

23. Parts Obsolescence

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

24. Payments

For Purchase 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. Invoices shall contain the following information: Purchase Order number, item number, description of articles, sizes, quantities, unit prices and extended totals. CME may make adjustments in Seller's invoices due to shortages, late delivery(ies), rejections, quality issues, use of counterfeit parts/materials, other defects/imperfections, or other failure to comply with the requirements of this order. If discounted terms apply, Cash discounts will be taken from the date of material receipt. Payment shall not constitute final acceptance. SELLER may be subject to any and all consideration, which may include adjustment in prices or paying cash back due to failures on the part of the SELLER which has subjected CME to paying consideration for the late delivery of its product to CME Customers which was result of SELLER's actions/inactions.

25. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net sixty (60) 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.

However, CME's terms of payment shall be permitted to toll in the event that CME's customer does not timely pay and/or any agency conducts an audit/review which further delays payment to CME. In the event this occurs, payment to SELLER shall be suspended until such time as customer does pay and/or agency concludes its audit/review authorizing payment. During this tolling time, SELLER agrees that its invoices shall cease aging, it shall not pursue collection efforts, and shall not charge interest on any invoice(s).

- (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) any master agreement or contract, **Bilateral Proprietary Information/Material & Allocation Of Rights In Intellectual Property Agreement** such as corporate, sector, or blanket agreements; (2) face of the Purchase Order, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (3) these General Provisions; and (4) Statement of Work.

However, in the accordance with the following in descending order of precedent for SELLER's/Supplier Quality shall be:): (1) Supplier Quality Flow-Downs as detailed on CME's website (and any conflict hereafter shall be settled in accordance with those Flow-Downs) (2) any master agreement, contract, corporate, sector, or blanket agreements; (3) face of the Purchase Order, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (4) these General Provisions; and (5) 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.
- (c) SELLER shall abide by the Supplier Quality Flow-Downs as detailed on CME's website: www.custom-mfg-eng.com . SELLER shall provide First Articles as well as any technical data needed for First Article Inspection and Acceptance. Failure to provide First Articles and/or technical data needed for First Article Inspection and Acceptance shall be

considered a breach of this Contract and void any payment or SELLER's Invoice.

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, unless otherwise agreed to in writing, including but not limited to **Bilateral Proprietary Information/Material & Allocation Of Rights In Intellectual Property Agreement**.

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. 24; Payments, Clause No. 29; Survivability, No. 33; Waiver, Approval, and Remedies, No. 35; Warranty, Clause No. 36; Counterfeit Work, Clause No. 42.
- (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. If SELLER's late delivery, or nonconforming product, results in any fees or penalties levied on CME by its end customer, CME reserves the right to pass any/all charges through to SELLER.
- (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 revised 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.

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 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 Legal Department
3845 Gateway Centre Blvd.
Suite 360
Pinellas Park, Florida 33782

Each party may change its designation by written notice to the other. All cancellations should first be sent to the CME Contracts 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 Contracts Department.

38. Entire Agreement

This Agreement or any signed Non-disclosure Agreement, Bilateral Proprietary Information/Material & Allocation Of Rights In Intellectual Property 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 understanding between the Parties

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

(ICC).

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.

39. Notification of Changes

Seller is obligated and must inform CME in writing of any and all changes to product, processes, suppliers, and facilities. In the event the changes or contemplated changes include non-conformities, Seller must adhere to original specifications and seek written authorization from CME for such as well as adhere to the remaining obligations as set forth in Paragraph 40. Non-Conformity.

40. Non-Conformity

Seller must notify CME of any nonconforming product and/or materials used in making product. Should Seller wish to use a nonconformity it must seek in writing CME's approval for nonconforming product disposition. In the event CME does not approve nonconformity, Seller must adhere to original specifications as dictated by CME or third party's issued requirements; Seller shall impound/contain non-conforming materials and not deliver further non-conforming product to CME. Additionally Seller shall hold-harmless and fully reimburse CME for any and all costs, fees, alternative procurement costs, damages (of any kind), and other charges CME incurred as a result of Seller's breach by using or continuing to use nonconformity without CME's written consent (authorization may only be given in writing by CME's President, Vice-President, or General Counsel). It is the responsibility of the Seller to flow down this requirement (as well as others in this contract) to its other manufacturing entities and its succeeding supply chain, this includes but is not limited to various corrective actions whether from CME or CME's customers (SCARs and such). The Seller is required to retain its business, communications, product quality, and/or other records² (related to the product being sold to CME) for a minimum of 5 years, unless Proprietary Information subject to Nondisclosure Agreement provides a longer term) after receipt of product by CME. Any such non-conformity(ies) will impact the quality rating of and may not meet CME's or Government's specifications.

41. Price Stability

Contract prices and discounts shall be fixed at the time of contract approval by CME and SELLER. CME reserves the right to modify quantity and configuration requirements. SELLER agrees to provide CME the revised quantity of items at the unit price as stated in the RFQ regardless of quantity changes.

42. Counterfeit Work

(a) For purposes of this clause, "Work" consists of those parts delivered under this Contract/Purchase Order to the lowest

level of separately identifiable items (e.g., articles, assemblies/sub-assemblies, components, electric parts/integrated circuits³, goods, items, and/or piece parts such as but not limited to: part, component module, assembly transistor, capacitor, resistor, diode, chip, component, circuit assembly and/or any embedded software or firmware) contained therein. Work may also include any lowest level of separately identifiable item which is or may be incorporated into any assembly, component, electrical/mechanical device, and/or CME product.

(b) Work shall consist of only new materials (not used, reconditioned, re-furbished, re-labeled, remarked, remanufactured, repaired, reworked, otherwise modified, or of such age as to impair usefulness or safety) and shall not consist of any of the provisions designated below.

(c) "Counterfeit Work" means

1. An unauthorized copy or substitute Work that has been or is suspected of being identified/misidentified, marked/mismarked, and/or altered by a source other than the part's authorized source whose material(s), performance, or characteristic(s) has been misrepresented to be authentic or to be from a authorized source at any level in the supply chain, or are not traceable to an original manufacturer sufficient to ensure authenticity in design and manufacture. "Parts" shall include, but are not limited to, a part, component module, assembly, transistor, capacitor, resistor, diode, chip, component, circuit assembly, and/or any embedded software or firmware or supply. Examples of Counterfeit Work, include but are not limited to:
 - a. Part(s) which do not contain the proper external and/or internal construction (die, manufacturer, wire bonding, etc.) consistent with the ordered part and/or required by the Original Equipment Manufacturer's (OEM) / Original Component Manufacturer's (OCM) and/or are not constructed in accordance with OEM/OCM design; or
 - b. Part(s) which have been used, reworked, remarked, re-labeled, repaired, refurbished or reclaimed, or otherwise represented from OEM/OCM design but not disclosed as such and/or are represented as new product and/or authentic; or
 - c. Part(s) which have a different package style or surface plating/finish than the ordered parts; or
 - d. Part(s) which have not successfully completed the OEM/OCM full production and test flow, but are represented as completed product; or
 - e. Part(s) sold as upscreened parts, which have not successfully completed upscreening; or
 - f. Part(s) sold with modified labeling or markings intended to misrepresent the part's form, fit, function,

² This includes but is not limited to any of CME's records or communicated shared with Seller.

³ A discrete electronic component (including, but not limited to: a

transistor, capacitor, resistor, or diode), which may or may not be a part of a circuit card assembly.

- grade or manufacturing date or intend to mislead a person into believing a non-OEM/OCM item is genuine, or that an item is of better or different performance when it is not; or
- g. Part(s) represented as new or false, including but not limited to identification of grade, serial number, lot number, date code, and/or performance characteristics; or
 - h. Part(s) have reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or
 - i. Part(s) that have not passed successfully all OEM/OCM required testing, verification, screening, and quality control processes.
2. Work misrepresented to be an authorized item or of the genuine authorized source⁴ or from the legitimate source claimed or implied by the marking and design of the product offered having been manufactured by or at the behest and to their standards of the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
 3. A new, used, outdated, or expired item from a authorized source that is misrepresented by any source to the end-user as meeting the performance requirements for the intended use; or anything inconsistent with what is defined in anywhere in this clause or defective parts and/or surplus material scrapped by the original manufacturer.
- (d) Prohibition: SELLER agrees and shall ensure that Counterfeit Work is not delivered to CME, nor contained in such Work through the implementation of policies that include prevention, detection, and risk mitigation methods to protect against Counterfeit Work. SELLER bears responsibility for procuring authentic Work or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this article as well as flow this requirement down to all its suppliers at all levels for buying or selling Work/Parts or for performing authentication testing.
 - (e) Prevention: SELLER shall only purchase Work/parts procured directly from the OCM/OEMs, or through the OCM authorized broker/distributor chain who conduct approved testing or inspection to ensure the authenticity of Work/Part. If Work/parts are not reasonably available from OCM/OEMs, SELLER shall take reasonable steps to ensure product integrity in accordance with SELLER's supply chain policies and only purchase authentic parts/components directly from the OEMs/OCMs or through the OEM's/OCM's authorized or franchised distribution chain. Work/Parts shall not be acquired from independent distributors or brokers unless approved in advance of purchase in writing by CME. In situations where qualified sources or materials are not available, CME may provide materials as Customer Furnished Material (CFM) / Customer Furnished Equipment (CFE) with relevant cost considerations to the Contract/Purchase Order.
 - (f) Notification: In the event SELLER becomes aware or suspects that it has furnished Counterfeit Work and/or Parts, it shall immediately notify CME in writing and provide all known pertinent facts as well as documentation. When requested by CME, SELLER shall maintain and provide authorized supplier documentation that authenticates traceability of the Work (complete lineage) all the way back to the original manufacturer of the Work and/or Parts as well as certificates of compliance/certificates of conformance. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
 - (g) Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.
 - (h) If suspect/Counterfeit Parts are furnished under this Contract/Purchase Order and are found in any of the Work delivered hereunder, such Work will be impounded by SELLER as well as any materials that have not yet been incorporated into Work and turn all over to CME; SELLER is further prohibited from putting any suspect/suspected of such or Counterfeit Parts into remaining balance of Work to be delivered under this Contract/Purchase Order. SELLER shall promptly replace such suspect/suspected of such or Counterfeit Parts with legitimate and authentic acceptable Work/Parts to CME and SELLER shall also be liable for all costs as detailed Remedies or elsewhere in these terms.
- In event SELLER obtains from such non-authorized suppliers appropriate certificates of conformance/certificate of compliance must provide all of the following: (i) the OEM's original certificates of conformance for the item, as well as everyone throughout the work/parts purchase/transfer/sale (ii) sufficient records providing unbroken supply chain traceability to the OEM, and (iii) test and inspection records demonstrating the item's authenticity. However in the event these records are falsified or in conflict with 3rd party testing done by CME (or its customer) or are subject to GIDEP alert or directive from the Aerospace Corporation indicating that such parts are Counterfeit shall be deemed definitive evidence of SELLER's Work contains Counterfeit Work and it shall not relieve SELLER of its obligations here under to replace and cover costs for non-Counterfeit Work as defined throughout this article including but not limited to Remedies or elsewhere in these terms.
- (i) Remedies: In the event that Work/Parts delivered under this Contract/Purchase Order are, or include, Counterfeit Parts or Suspect Counterfeit Parts, SELLER shall promptly investigate, analyze and report in writing to CME that Counterfeit Parts should be replaced with genuine parts conforming to the requirements of this Contract/Purchase Order. SELLER is solely responsible for any and all costs, including but not limited to, rebuild at any stage of production (including but not limited to work in progress, not yet built, and completed products) of CME's product if Counterfeit Parts cannot be easily accessed due to manufacturing materials (such as but not limited to epoxy and/or soldered) and/or manufacturing processes (such as but not limited to encapsulation), in order for to meet the Con-

⁴ Original OEM/OCM and/or brokers or distributors who purchase

directly from the original OEM/OCM.

tract/Purchase Order requirements. SELLER's sole expense may include any costs CME incurs as a result of discovery of Counterfeit Parts in Work⁵ /Parts or Suspect Counterfeit Parts even if such costs might be considered indirect, special or consequential damages. Damages may include but are not limited to: testing/analysis done by any third party for or on behalf of themselves and/or CME, re-design of any and all CME products/Work/parts, re-purchase of legitimate Work/parts, lost profits, overhead costs, analysis/testing, CME's attorneys' fees and costs (including any enforcement prior or forcing suit/arbitration and all appeals), entire rebuild costs of CME product, labor and assembly or shipping and/or disposal/scrap. CME retains the right to make any GIDEP report on any of SELLER's Work which is Counterfeit Work or Suspect Counterfeit Work.

- (j) CME shall have the right to audit, inspect, and / or approve the processes at any time before or after delivery of the goods ordered hereunder. CME shall have the right to require changes to the processes to conform with CME's defined standards, if any. Failure of the SELLER to conform its processes to CME's defined standards may result in the termination of this Contract/Purchase Order in accordance with the termination provisions set forth herein. SELLER shall maintain a documented system (policy, procedure, and/or other documented approach) including but not limited to inspection, segregation, quarantining, avoidance of counterfeit work/parts, testing of such and scrap, that provides for prior notification to CME to allow its written approval before parts/components are procured from sources other than OEMs, OCMs, or through the OEM's/OCM's authorized distribution chain. Upon CME's request, SELLER shall provide copies of such documentation for its system to CME for inspection. SELLER shall also maintain documentation of parts and/or identification thereof incorporated into product.
- (k) SELLER's liability for suspect/suspected and/or Counterfeit Work shall not expire until 60 months after delivery and acceptance of Work. This provision shall survive termination or expiration of this Contract and/or other legal documents (including but not limited to Subcontracts, Teaming Agreements, or Non-disclosure/Proprietary Information Agreements).
- (l) SELLER shall include all provisions of this Counterfeit Work clause or equivalent provisions in all lower tier subcontracts for the delivery of items that will be included in or furnished as Work/Parts to CME.

43. MATERIAL SUBSTITUTION PROHIBITION

- A. **Unauthorized Material Substitution (General)**
Unauthorized material substitutions are not permitted on Buyer's Goods. Unauthorized material substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes Buyer design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials

specified in the engineering definition (and often described as approved material substitutions therein) do not constitute unauthorized material substitution. Terms and definitions for metallic materials and processing may be declared in the drawings or otherwise specified.

Contact Buyer's Authorized Procurement Representative for details regarding deviations to authorized materials. Seller agrees and understands that such deviations only apply to this purchase contract, and only as indicated in the Buyer's authorized document.

- B. **Metallic Materials (Specific)**
Temper or Condition Conversion - Unless specifically authorized by the engineering definition, conversion of a raw material (i.e. heat treat to change the temper or condition of the material) constitutes material substitution of the condition provided by the manufacturer.

Metallic Raw Materials – Buyer's engineering drawings may refer to obsolete or superseded specifications covering several forms, thicknesses, widths, etc. of the alloy or alloys. The required characteristics of these materials are defined not only by the objective test standards of the specification, but by the processes/methods by which this final form is achieved. These requirements are often captured in the definitions of the required material forms, and may not be explicitly called out in the detailed requirements. The raw material certification results from both the process used to make it and the tests to verify basic properties.

Seller shall ensure that metallic materials covered by current or obsolete/superseded specifications are produced using the standard industry practices designed strictly for the production of stock to the specified thickness, diameter, width or cross sectional area, achieved by thermo-mechanical processing or casting process. Chemical, electrochemical and mechanical methods used for the removal of surface scale or contamination, or the production of the required surface finish, in accordance with the material specification are acceptable. Raw material must not be recertified with respect to thickness, diameter, width or cross sectional area or product form. Machining or cutting of thicker product or other product forms shall not be supplied in lieu of specified product unless specifically authorized by Buyer. Raw material certifications for material or parts shall reflect the form and size of the raw material as originally manufactured by the raw material producer.

- C. **Specification Supersession:**
For government specifications and standards canceled after June 1994, Seller and subcontractors at all tiers shall use the last active revision of the canceled specification and standard until an acceptable replacement is included in the requirements of this Contract. Contact the Buyer's Authorized Procurement Representative in the event of any inconsistency in applicable specification or standard.
- D. **Reports (Full Pedigree from melt to final product) - Raw material certifications shall show clear traceability to the manufacturer(s) of the raw material including ingot source,**

⁵ Including without limitation CME's costs of removing Counterfeit Work including without limitation CME's costs relating to the removal and replacement of said parts external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of SELLER's goods after counterfeit parts have been exchanged, of reinserting replacement Work and of any testing necessitated by the

reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies CME may have at law, equity or under other provisions of this Contract/Purchase Order. SELLER is additionally liable for all costs, fees, and penalties relating to removal and replacement of parts after counterfeit parts notice or discovery.

all thermo-mechanical processing (i.e. forging, rolling, drawing, etc.), heat treatment, chemical processing and inspections as required by applicable raw material specification requirements.

- E. Chain of Custody (Disguising intermediate ownership) – Suppliers shall not disguise the pedigree of material or chain of ownership by removal of a previous supplier's name, nomenclature or identification.
- F. Source of Additional Information - Addition information and guidance may be found through Buyer's Supplier Portal or Buyer's Authorized Procurement Representative.
- G. The substance of this Article shall be flowed in all subcontracts at every tier.

44. CHANGE NOTIFICATION

- A. SELLER agrees to advise CME Procurement Representative of any change, initiated by SELLER, to the design, form, fit, or function of the goods furnished under this Contract. Furthermore, any change involving a substitution of material, changes in SELLER's manufacturing and/or acceptance processes, or changes in manufacturing location will be submitted immediately in writing to CME Procurement Representative and CME General Counsel for processing and review. CME will, within 45 days after receipt of the written notice, notify SELLER of acceptance, rejection, or other status of such changes. In no event will SELLER incorporate such changes without CME's prior written approval. All goods to be delivered will incorporate all changes and revisions that are approved by CME under this clause, commencing with the agreed effectivity of such changes.
- B. Nothing contained in this clause will excuse SELLER from performing in strict compliance with the terms, conditions, delivery schedule, specifications, or any other provision of this Contract.
- C. Noncompliance with this change notification requirement may result in subsequent rejection of delivered items and actual and/or consequential damages.
- D. Additionally, should CME's Customer issue a Stop Work Order, SELLER shall immediately cease all work and takes all reasonable steps to cease the incurrence and allocation of additional costs. In the event of a Termination for Convenience and/or Termination for Default, SELLER shall follow written direction of CME's General Counsel on how to proceed forward in accordance with applicable FAR/DFARS as well as this Contract.

45. INSPECTIONS AND TEST RECORDS.

During the performance of this Contract and for a period of 10 years after acceptance of all goods to be delivered under this Contract, SELLER shall keep and maintain all inspection and test records, and all other technical data generated under or related to this Contract including, but not limited to, drawings, designs, specifications, and manufacturing and process control records. Upon CME's request, SELLER shall make available for inspection, and shall allow CME to make copies of, and take excerpts from, all such records and data.

46. DEFECTIVE COST OR PRICING DATA

- A. If SELLER, its subcontractor, or prospective subcontractor fails to submit accurate, complete and current cost or pricing data, and as a result of that failure, the Government reduces the price of CME's prime contract, CME may recover from SELLER amount equal to the price reduction of the prime contract.
- B. If, as a result of SELLER's or its subcontractor's foregoing conduct, the Government imposes a penalty on or charges CME interest, CME may recover from SELLER the amount of that interest or penalty.
- C. For the purposes of paragraphs A. and B. of this clause, 46, if CME is a higher tier subcontractor, "Government" means the higher tier contractor and "prime contract" means the higher tier subcontract.
- D. SELLER will not raise as defenses the matters listed in FAR 52.215-10(c)(1) (OCT 1997) or FAR 52.215-11(d)(1) (OCT 1997).

SECTION II: FAR FLOWDOWN PROVISIONS

A. Incorporation of FAR Clauses

- a) Sections II and III of this document shall only be applicable to SELLER if the Subcontract, Purchase Order, or Contract issued to SELLER is for the direct or indirect support to any agency of the U.S. Government and/or is funded in whole or in part by any agency of the U.S. Government.
- b) 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

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) In paragraph (c), "30 days" is changed to "20 days."
- (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) 52.246-7 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.)
- (y) 52.246-15 Certificate of Conformance (April 1984) (See Notes 2 and 3.)
- (z) 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.) (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.)
- (aa) 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 Era 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.)
- (f) 52.215-14 Integrity of Unit Prices (October 1997) (Delete paragraph (b) of the clause.)
- (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.)
- (h) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (August 1996) (See Notes 2 and 4.)

4. The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$550,000:

- (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.)

5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:

- (a) 52.215-12 Subcontractor Cost or Pricing Data (October 1997) (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 Subcontractor Cost or Pricing Data – Modifications (October 1997) (Applicable for modifications if not otherwise exempt under FAR 2.15.403.)

6. The following FAR clauses apply to this Contract as indicated:

- (a) 52.204-2 Security Requirements (August 1996) (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)
- (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.)
- (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.)
- (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) 52.223-3 Hazardous Material Identification and Material Safety Data (January 1997) (Applicable if the Contract involves hazardous material. See Notes 2 and 3.)
- (g) 52.223-7 Notice of Radioactive Materials (January 1997) (Applicable to Work containing covered radioactive material. Insert "30" in the blank; See Notes 1 and 2.)
- (h) 52.224-1 Privacy Act Notification (April 1984) (Applicable when the Contract requires design, development, or operation of a system of records on individuals.)
- (i) 52.224-2 Privacy Act (April 1984) (Applicable when the Contract requires design, development, or operation of a system of records on individuals.)
- (j) 52.227-9 Refund of Royalties (April 1984) (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
- (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.)
- (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.)

(m) 52.228-5	Insurance – Work on a Government Installation (January 1997) (Applicable if Work performed on government installation. See Note 2.)	(e) 252.227-7013	Rights in Technical Data – Noncommercial Items (November 1995)
(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.)	(f) 252.227-7014	Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation (June 1995)
(o) 52.230-6	Administration of Cost Accounting Standards (November 1999) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)	(g) 252.227-7016	Rights in Bid or Proposal Information (June 1995)
(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 costs from CME" after "33.104(h)(1)"; See Note 2.)	(h) 252.227-7027	Deferred Ordering of Technical Data or Computer Software (April 1988) (See Note 4.)
(q) 52.237-2	Protection of Government Buildings, Equipment, and Vegetation (April 1984) (Applicable if work performed on government installation. See Note 2.)	(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)
(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.)	(j) 252.227-7030	Technical Data -Withholding of Payment (March 2000) (See Notes 1 and 2.)
(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)
		(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.)

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
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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)

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, notwithstanding 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, 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.

8. 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 Legal Department
3845 Gateway Centre Blvd.
Suite 360
Pinellas Park, Florida 33782

Or See order

- B. 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.