

THERMAVANT TECHNOLOGIES SUPPLEMENTAL TERMS & CONDITIONS

Document number: "TC-02_FAR" dated August 08, 2017

Purchasing Standard Terms and Conditions

Definitions. "Buyer" shall mean ThermAvant Technologies, LLC "Seller" shall mean the party with whom Buyer is contracting and to whom Buyer has issued this Purchase Order ("Order").

1. When materials, and products ("goods") or services, including the products resulting from services hereby ordered are for use in connection with a United States Government ("Government") prime contract or higher-tier subcontract, in addition to the General Provisions (TC-01_ALL), the following FAR clauses and provisions (TC-02_FAR) shall apply, as required by the terms of the prime contract or by operation of law or regulation. The effective version of each FAR provision shall be the same version as that which appears in Buyer's prime contract, or higher-tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these FAR provisions (TC-02_FAR) and the General Provisions (TC-01_ALL), the FAR provisions (TC-02_FAR) shall control.

2. The following clauses set forth in the FAR in effect as of the date of the prime contract or higher-tier subcontract are incorporated herein by reference. In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, for example in FAR 52.227-1 or FAR 52.227-2, or when title to property is to be transferred directly to the Government. The listed FAR clauses are incorporated herein as if set forth in full text unless made inapplicable by their corresponding notes, if any. If any of the following FAR clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR clauses in accordance with the flow down requirements specified in such clauses.

A. APPLICABLE TO PURCHASE ORDERS WITHOUT REGARD TO DOLLAR VALUE:

1. **52.202-1** "Definitions"
2. **52.203-3** "Gratuities"
3. **52.204-2** "Security Requirements" (Applicable to Purchase Orders that involve access to classified information.)
4. **52.204-9** "Personal Identity Verification of Contractor Personnel" (Applicable to Purchase Orders when Seller's employees are required to have routine physical access to a Federally-controlled facility and / or routine access to a Federally-controlled information system.)
5. **52.204-13** "System for Award Management Maintenance"
6. **52.204-19** "Incorporation By Reference of Representations and Certifications"
7. **52.209-10** "Prohibition on Contracting with Inverted Domestic Corporations"
8. **52.211-5** "Material Requirements"
9. **52.211-15** "Defense Priority and Allocation Requirements"
10. **52.215-08** "Order of Precedence – Uniform Contract Format"
11. **52.215-22** "Limitations on Pass-Through Charges – Identification of Subcontract Effort" (Applicable to solicitations for Purchase Orders that will incorporate FAR clause 52.215-23 or 52.215-23 Alt I.)

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12. **52.215-23 & Alt I** "Limitations on Pass-Through Charges" (Include Alternate I if it is included in the prime contract.) (Applicable to cost-reimbursement Purchase Orders that exceed the simplified acquisition threshold, except if the contract is with the Department of Defense (DoD), then this clause is applicable to all cost-reimbursement Purchase Orders and fixed-price Purchase Orders, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.)
13. **52.219-6** "Notice of Total Small Business Set-Aside"
14. **52.219-8** "Utilization of Small Business Concerns"
15. **52.219-14** "Limitations on Subcontracting"
16. **52.219-28** "Post-Award Small Business Program Representation"
17. **52.222-3** "Convict Labor"
18. **52.222-4** "Contract Work Hours and Safety Standards – Overtime Compensation" (Applicable to Purchase Orders that require or involve the employment of laborers and mechanics at any tier.)
19. **52.222-41** "Service Contract Labor Standards" (Applicable to Purchase Orders that are subject to the Service Contract Labor Standards statute.)
20. **52.222-50 & Alt 1** "Combating Trafficking in Persons" (Alternate 1 is applicable to Purchase Orders if it is included in the prime contract.)
21. **52.222-54** "Employment Eligibility Verification" (Applicable to Purchase Orders for (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,000 or the dollar threshold in effect as of the date of the prime contract; and (iii) includes work performed in the United States.)
22. **52.222-55** "Minimum Wages Under Executive Order 13658" (Applicable to Purchase Orders regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)
23. **52.223-3** "Hazardous Material Identification and Material Safety Data" ("Government" means "Government and Buyer" in this clause.)
24. **52.223-5** "Pollution Prevention and Right-to-Know Information" (Applicable to Purchase Orders that provide for performance on a Federal facility.)
25. **52.223-7** "Notice of Radioactive Materials"
26. **52.223-11** "Ozone-Depleting Substances"
27. **52.224-1** "Privacy Act Notification" (Applicable to Purchase Orders when the design, development, or operation of a system of records on individuals is required to accomplish an agency function.)
28. **52.224-2** "Privacy Act" (Applicable to Purchase Orders that require the design, development, or operation of any system of records on individuals that is subject to the Privacy Act.)
29. **52.225-1** "Buy American – Supplies"
30. **52.225-5** "Trade Agreements"
31. **52.225-8** "Duty-Free Entry" (Applicable to Purchase Orders including supplies that may be imported into the United States.)
32. **52.225-13** "Restrictions on Certain Foreign Purchases"
33. **52.225-26** "Contractors Performing Private Security Functions Outside the United States" (Applicable to Purchase Orders issued under (i) DoD contracts that that will be performed in areas of contingency operations, combat operations, as designated by the Secretary of Defense, or other significant military operations, as designated by the Secretary of Defense upon agreement of the Secretary of State or (ii) non-DoD contracts that will be performed in areas of Combat operations, as designated by the Secretary of Defense, or other significant

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- military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.)
34. **52.227-9** "Refund of Royalties" (Applicable to Purchase Orders in which the amount of royalties reported during negotiation of the Purchase Order exceeds \$250.)
 35. **52.227-10** "Filing of Patent Applications-Classified Subject Matter" (Applicable to Purchase Orders that cover or likely to cover classified subject matter.)
 36. **52.227-11** "Patent Rights – Ownership by the Contractor" (Applicable to Purchase Orders for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.)
 37. **52.227-14** "Rights in Data – General"
 38. **52.227-19** "Commercial Computer Software License"
 39. **52.227-20** "Rights in Data – SBIR Program" (as applicable)
 40. **52.228-3** "Workers' Compensation Insurance" (Defense Base Act)
 41. **52.228-4** "Workers' Compensation and War Hazard Insurance Overseas"
 42. **52.228-5** "Insurance-Work on a Government Installation"
 43. **52.229-3** "Federal State and Local Taxes"
 44. **52.232-23** "Assignment of Claims (May 2014) – Alternate I (Apr 1984)"
 45. **52.232-39** "Unenforceability of Unauthorized Obligations"
 46. **52.232-40** "Providing Accelerated Payments to Small Business Subcontractors" (Applicable to Purchase Orders awarded after December 26, 2013 to small business when Buyer receives Accelerated Payments under its prime contract.)
 47. **52.233-1** "Disputes"
 48. **52.233-3** "Protests After Award"
 49. **52.233-4** "Applicable Law For Breach Of Contract Claim"
 50. **52.234-1** "Industrial Resources Developed Under Defense Production Act Title III"
 51. **52.236-13** "Accident Prevention" (Applicable to fixed-price construction, fixed-price dismantling, demolition, or removal of improvements Purchase Orders.)
 52. **52.237-2** "Protection of Government Buildings, Equipment and Vegetation"
 53. **52.242-13** "Bankruptcy"
 54. **52.243-1** "Changes—Fixed Price (Aug 1987) – Alternate V (Apr 1984)"
 55. **52.243-6** "Change Order Accounting"
 56. **52.244-5** "Competition in Subcontracting"
 57. **52.244-6** "Subcontracts for Commercial Items"
 58. **52.245-1** "Government Property" (Applicable to Purchase Orders issued under non DoD prime contracts containing FAR 52.245-1 without Alternate I and the Purchase Order is either a cost-reimbursement, time and materials, or labor hour type, or is a fixed priced Purchase Order awarded on the basis of submission of certified cost or pricing data (reference FAR 45.104). Under DoD prime contracts containing FAR 52.245-1 without Alternate I, in addition to the Purchase Order types listed at FAR 45.104, the clause is applicable to negotiated fixed-price Purchase Orders awarded on a basis other than submission of certified cost or pricing data.)
 59. **52.245-1 Alt I** "Government Property" (Alternate I – Applicable to Purchase Orders issued under prime contracts containing FAR 52.245-1 with Alternate I, and to Purchase Orders issued under prime contracts containing FAR 52.245-1 without Alternate I when the Purchase Order awarded is of a type other than a Purchase Order type listed in FAR 45.104 or DFARS 245.104.)
 60. **52.245-1 Alt II** "Government Property" (Applicable to Purchase Orders for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research.)
 61. **52.246-2** "Inspection of Supplies – Fixed-Price"
 62. **52.246-23** "Limitation of Liability (Feb 1997)"

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63. **52.247-63** "Preference for U.S.-Flag Air Carriers" (Applicable to Purchase Orders that involve international air transportation.)
64. **52.247-64** "Preference for Privately Owned U.S.-Flag Commercial Vessels"
65. **52.249-2** "Termination for Convenience of the Government" (Fixed-Price) – (The usual substitution of the parties in which "Government" means "Buyer", "Contracting Officer" means "Buyer's Purchasing Representative", and "Contractor" means "Seller" is applicable to this clause except that any express obligation to transfer or assign title to property shall be modified such that "Government" means "Government or Buyer".) (In paragraph (d) the term "45 days" is changed to "90 days." The term "one-year" in paragraph (e) is changed to "six months." The term "90 days" in paragraph (l) is changed to "forty-five days.")
66. **52.249-9** "Default (Fixed-Price Research and Development) (Apr 1984)"
67. **52.253-1** "Computer Generated Forms (Jan 1991)"

B. PURCHASE ORDERS OVER THE MICRO-PURCHASE THRESHOLD (AS DEFINED AT FAR 2.101 IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.223-18** "Encouraging Contractor Policies to Ban Text Messaging while Driving"

C. PURCHASE ORDERS OVER \$10,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.222-21** "Prohibition of Segregated Facilities"
2. **52.222-26** "Equal Opportunity"
3. **52.222-40** "Notification of Employee Rights Under the National Labor Relations Act" (Applicable to Purchase Orders issued under prime contracts resulting from solicitations issued after December 12, 2010.)

D. PURCHASE ORDERS OVER \$15,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.222-20** "Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000"
2. **52.222-36** "Equal Opportunity for Workers with Disabilities"

E. PURCHASE ORDERS OF \$25,000 OR MORE (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.204-10** "Reporting Executive Compensation and First-Tier Subcontract Awards" (Applicable to Purchase Orders when Buyer is the Prime Contractor.) (The usual substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.)

F. PURCHASE ORDERS OVER \$30,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.209-6** "Protecting the Government's Interest when Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment"

G. PURCHASE ORDERS OF \$100,000 OR MORE (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.222-35** "Equal Opportunity for Veterans"
2. **52.222-37** "Employment Reports on Veterans"

H. PURCHASE ORDERS OVER \$150,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.203-7** "Anti-Kickback Procedures" (Excepting subparagraph (c)(1) of the clause.)

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2. **52.203-12** "Limitation on Payments to Influence Certain Federal Transactions"
3. **52.203-16** "Preventing Personal Conflicts of Interest" (Applicable to Purchase Orders that include a requirement for services that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.)
4. **52.248-1** "Value Engineering"

I. PURCHASE ORDERS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (AS DEFINED AT FAR 2.101 IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.203-5** "Covenant Against Contingent Fees"
2. **52.203-6** "Restrictions on Subcontractor Sales to the Government"
3. **52.203-8** "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity"
4. **52.203-10** "Price or Fee Adjustment for Illegal or Improper Activity"
5. **52.203-17** "Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights" (Applicable to Purchase Orders under contracts awarded by civilian agencies other than NASA and the Coast Guard.)
6. **52.204-4** "Printed or Copied Double-Sided on Recycled Paper"
7. **52.215-2** "Audit and Records – Negotiation" (Applicable to Purchase orders: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause.)
8. **52.215-14** "Integrity of Unit Prices" (less paragraph (b))
9. **52.222-60** "Paycheck Transparency"
10. **52.223-06** "Drug-Free Workplace"
11. **52.227-1** "Authorization and Consent and Alternate I" (Include Alternate 1 if it is included in the prime contract.)
12. **52.227-2** "Notice and Assistance Regarding Patent and Copyright Infringement"
13. **52.222-17** "Nondisplacement of Qualified Workers" (Applicable to Purchase Orders when services are to be performed by Seller (1) under service contracts, as defined at 22.001, (2) that succeed purchase orders for performance of the same or similar work at the same location and (3) that are not exempted by 22.1203-2 or waived in accordance with 22.1203-3.) (Seller to furnish information needed by Buyer to comply with paragraphs d and e of this clause.)

J. PURCHASE ORDERS OVER \$650,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.219-9** "Small Business Subcontracting Plan"

K. UNLESS OTHERWISE EXEMPT (SEE FAR 15.408), PURCHASE ORDERS ALSO INCLUDE:

1. **52.215-10** "Price Reduction for Defective Certified Cost or Pricing Data"
2. **52.215-11** "Price Reduction for Defective Certified Cost or Pricing Data – Modifications"
3. **52.215-12** "Subcontractor Certified Cost or Pricing Data"
4. **52.215-13** "Subcontractor Certified Cost or Pricing Data – Modifications"
5. **52.215-15** "Pension Adjustments and Asset Reversions"
6. **52.215-18** "Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions"
7. **52.215-19** "Notification of Ownership Changes"
8. **52.215-20** "Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data"

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9. **52.215-21** "Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications"

L. PURCHASE ORDERS OVER \$5,000,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT) ALSO INCLUDE:

1. **52.203-14** "Display of Hotline Poster(s)"

M. PURCHASE ORDERS THAT HAVE A VALUE OF MORE THAN \$5,000,000 (OR THE DOLLAR THRESHOLD IN EFFECT AS OF THE DATE OF THE PRIME CONTRACT); AND THAT HAVE A PERFORMANCE PERIOD OF MORE THAN 120 DAYS ALSO INCLUDE:

1. **52.203-13** Contractor Code of Business Ethics and Conduct" (In paragraph (b)(3)(i), the meaning of "agency office of the Inspector General" and "Contracting Officer" does not change, in paragraph (b)(3)(ii) the meaning of "Government" does not change and in paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of "OIG of the ordering agency" "IG of the agency", "agency OIG" and "Contracting Officer" do not change.)

N. COST REIMBURSEMENT, TIME & MATERIAL OR LABOR HOUR PURCHASE ORDERS ALSO INCLUDE:

1. **52.215-16** "Facilities Capital Cost of Money" (unless 52.215-17 is explicitly included)
2. **52.216-7** "Allowable Cost and Payment" (Seller agrees to execute assignment documents in order to comply with subsection (h).) (This clause is not applicable to Labor Hour Purchase Orders.)
3. **52.216-8** "Fixed Fee" (Applicable if this is a cost plus fixed fee Purchase Order.)
4. **52.216-10** "Incentive Fee" (Applicable if this is a cost plus incentive fee Purchase Order.)
5. **52.216-11** "Cost Contract -No Fee" (Applicable if this is a cost no fee Purchase Order.)
6. **52.216-12** "Cost Sharing Contract- No Fee" (Applicable if this is a cost sharing, no fee Purchase Order.)
7. **52.222-2** "Payment for Overtime Premiums" – Insert "0%" in paragraph (a) unless indicated otherwise in the Purchase Order.
8. **52.232-7** "Payments under Time-and-Materials and Labor-Hour Contracts" – ("schedule" means this Purchase Order, "voucher(s)" means invoice(s).
9. **52.232-20** "Limitation of Cost" (Applicable to fully funded Purchase Orders.)
10. **52.232-22** "Limitation of Funds" (Applicable to incrementally funded Purchase Orders.)
11. **52.243-2** "Changes – Cost-Reimbursement" (Applicable to cost-reimbursement Purchase Orders.)
12. **52.243-3** "Changes – Time and Material or Labor-Hours" (Applicable to time and material or labor hour Purchase Orders.)
13. **52.244-2** "Subcontracts" (paragraphs (g) and h) only apply)
14. **52.246-3** "Inspection of Supplies (Cost-Reimbursement)" – ("Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer and "Government" (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and/or Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)
15. **52.246-5** "Inspection of Services (Cost Reimbursement)" – ("Contracting Officer" means Buyer's Purchasing Representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer). The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)

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16. **52.246-6** "Inspection of Time and Material and Labor Hour" – ("Contracting Officer" means Buyer's Purchasing Representative and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and/or Buyer".) (The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)

17. **52.249-6** "Termination (Cost-Reimbursement)" – ("Government" means "Buyer" and "Contracting Officer" means Buyer's Purchasing Representative. In paragraph (e) Change "15 days" and "45 days" to "30 days" and "90 days", respectively. In paragraph (f) change "1 year" to "six months".) (Alternate IV is applicable to time and material or labor hour orders only.)

18. **52.249-14** "Excusable Delays"

3. CERTIFICATIONS:

The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

A. 52.203-11 "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" (Applicable to offers and Purchase Orders over \$150,000 or the dollar threshold in effect as of the date of the prime contract.)

B. 52.209-5 "Certification Regarding Responsibility Matters" (Applicable to offers and Purchase Orders over \$30,000 or the dollar threshold in effect as of the date of the prime contract.)

C. 52.222-22 "Previous Contracts and Compliance Reports" (Applicable to offers and Purchase Orders over \$10,000 or the dollar threshold in effect as of the date of the prime contract.)

4. ADDITIONAL CLAUSES:

A. COST ACCOUNTING STANDARDS (Applicable when stated in the Purchase Order)

1. **52.230-2** "Cost Accounting Standards"
2. **52.230-3** "Disclosure and Consistency of Cost Accounting Practices"
3. **52.230-5** "Cost Accounting Standards – Educational Institution"
4. **52.230-6** "Administration of Cost Accounting Standards"

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting the applicable Cost Accounting Standards clause, and the Administration of Cost Accounting Standards clause, provided Seller shall not be required to disclose to Buyer such communications containing information confidential to the Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-4, 52.230-5 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses, except in FAR 52.230-6.

B. TRUTHFUL COST OR PRICING DATA

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.

1. Indemnification

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If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction. The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:

- a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- b. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

2. Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

5. DISPUTES – GOVERNMENT CONTRACTS

Any reference to "Disputes" in any applicable FAR Clause contained herein shall mean this paragraph, Disputes -- Government Contracts.

A. Any dispute arising under this Purchase Order relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with Paragraph (B) below. All other disputes will be resolved by the Disputes and Governing Law Section in the General Terms and Conditions of Purchase.

B.

1. Notwithstanding any other provisions in this Purchase Order, any decision of the Contracting Officer under the prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to this Purchase Order, provided that:

- a. The Buyer notifies with reasonable promptness the Seller of such decision and
- b. The Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
- c. If Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.

2. Any decision upon such appeal, when final, shall be binding upon the Seller and Seller shall have no recourse against Buyer for any damages that allegedly resulted from the decision of the Contracting Officer.

3. The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.

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4. The Seller shall indemnify and save harmless Buyer from any and all liability of any kind incurred by or imputed to Buyer under Section 5, "Fraudulent Claims," of the Contract Disputes Act of 1978, as amended, (41 U.S.C. 7103 (c)(2), Fraudulent Claims) if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.

C. Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this Purchase Order, the Seller shall proceed diligently, as directed by Buyer, with the performance of this Purchase Order.

D. Nothing in this Section 5 nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

E. As used in this Section 5, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978, as amended.