



PATRIOT CONTRACT SERVICES, LLC

TERMS AND CONDITIONS GOVERNING ORDERS FOR SUPPLIES AND SERVICES

A. GENERAL PROVISIONS APPLICABLE TO GOODS AND SERVICES.

It is understood and agreed that the following terms and conditions stated in this Part A are applicable to both the sale of Goods and/or Services to Purchaser, its vessels, equipment and/or other property:

1. Definitions. "Vendor" means the person, partnership, corporation or other entity undertaking to supply the goods or services which are subject to the Purchase Order either in its own name or through an authorized agent. The term "Goods" shall mean the goods supplied pursuant to the Purchase Order. The term "Services" includes all design, delivery, installation, inspection and testing specified or required to furnish the Goods and/or provide the repair, improvements, and/or other work as specifically described on the Purchase Order. The term "Property" includes the vessel, equipment and/or other items of Purchaser for which Vendor is to provide Services. "Purchaser" means Patriot Contract Services, LLC or any subsidiary or affiliate for which Patriot Contract Services, LLC is acting as purchasing agent. "Purchase Order" means the Patriot Contract Services purchase order pertaining to the purchase and sale of the Goods and/or Services.

2. Entire Agreement. The Purchase Order and any attachments thereto or referred to specifically therein, these Terms and Conditions Governing Orders for Supplies and Services (these "Terms and Conditions"), and the Note to Vendor provided in the Vendor Packet, together constitute the entire agreement between the parties with respect to the subject matter thereof, and no terms or conditions contained in any written or other acceptance, quote or confirmation thereof by Vendor, which are in addition to, or different from, those set forth herein, shall in any way affect or act to modify or amend any of the terms and conditions thereof. Vendor's acceptance of the Purchase Order is limited to the terms and conditions thereof, unless Purchaser expressly agrees to any such proposal or term in writing. Vendor, and its subcontractors and suppliers, are bound by Purchaser's contract with the government (the "Prime Contract") insofar as any of that Prime Contract's terms and conditions relate in any way, directly or indirectly, to the services or goods being provided by Vendor. Without limiting the foregoing sentence, Vendor shall be bound to the FAR and DFARS clauses listed in section 7 of this Part A of these Terms and Conditions.



3. Changes and Termination.

(a) Changes Ordered by Purchaser: Purchaser shall have the right to order changes from time to time in the performance required of Vendor under the Purchase Order by issuing a new Purchase Order. No change shall be made by Vendor in its performance unless and until such change is specified in writing in a new Purchase Order signed by a Purchasing Agent of Purchaser. Upon receipt of a new Purchase Order, Vendor shall without delay conform its performance to the new Purchase Order.

(b) Termination by Purchaser: Purchaser may terminate the Purchase Order in whole or in part at any time and for any reason (including without limitation on account of defects in materials, workmanship or quality, or if the Vendor fails to comply with or perform any of the terms and conditions, provisions, promises or warranties of the Purchase Order), by written notice, stating the extent and effective date of such termination. Upon receipt of notice Vendor will, as and to the extent directed by Purchaser, stop work under the Purchase Order and the placement of further purchase orders and subcontracts outstanding thereunder, and take any necessary action to protect property in Vendor's possession in which Purchaser has or may acquire an interest. In the event Purchaser terminates the Purchase Order for default, Vendor shall also be liable for all damages and costs of Purchaser resulting from such default, regardless of any action taken or not taken by Purchaser to cancel the Purchase Order entirely or in part. Purchaser's sole liability to Vendor in case of termination other than termination for default of Vendor shall be reimbursement of Vendor's expenses incurred up to and including the date of termination.

(c) Work Beyond Agreed Scope: If Services will exceed the scope of work stated on the Purchase Order, the Vendor must submit a written Condition Report to the Port Engineer and obtain an updated Purchase Order signed by PCS prior to proceeding with that additional work. If the Purchase Order is not updated prior to that additional work being performed, Purchaser shall have no obligation to pay for the additional work. Only an authorized Patriot Contract Services Purchasing Agent can issue a Purchase Order or commit funds. Vendor may not accept a verbal authorization from the Port Engineer or from vessel personnel.

4. Acceptance of Shipments and Inspection. All Goods and Services covered by the Purchase Order are subject to inspection by Purchaser at any time or place and may be rejected if not strictly in accordance with all terms, conditions and provisions therein contained or attached. Payment for shipments and/or progress payments for work in progress shall not constitute acceptance thereof, and defective shipments or performance and/or shipments not in accordance with the Purchase Order will, at Purchaser's option, be held for Vendor's instructions at Vendor's



risk, or will be returned to Vendor. Vendor will be responsible for transportation charges on returned shipments both ways. Any prior payment made by Purchaser on such rejected Goods or Services shall be immediately refunded, and the rejected Goods or Services shall not be replaced or re-performed without an additional Purchase Order from Purchaser. At Purchaser's option, inspection and tests before delivery may be made by Purchaser or Purchaser's customers at Vendor's premises or elsewhere, at reasonable times and places, and Vendor will provide sufficient safe and proper facilities for such inspection or testing; but, notwithstanding any inspections and/or tests, the Goods and Services covered by the Purchase Order are subject to rejection upon final test, inspections and use upon delivery to the premises or vessel of Purchaser or Purchaser's customer. Purchaser's count shall be accepted as final on all shipments whether or not accompanied by a packing list.

5. Indemnity. To the fullest extent permitted under law, Vendor shall indemnify, hold harmless and defend Purchaser from and against any or all suits, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or nature (including, but not limited to, court costs and reasonable attorneys' fees) arising out of any personal injury (including death) or property damage or loss (including without limitation damage to the vessel) relating to any defect in the Goods or Services or relating to any act or omission (whether or not negligent), fault, negligence or default of Vendor or any person, firm, corporation or other entity acting on Vendor's behalf, in connection with or incident to the Purchase Order, even if the same be, or is alleged to be, due wholly or in part to the negligence of Purchaser or anyone acting on its behalf, except for damage or injury caused directly by the willful misconduct of Purchaser. Vendor shall immediately give notice to Purchaser of any damage Vendor causes to the vessel, and of any potential claim against or legal action involving the Purchaser. Vendor shall indemnify Purchaser against any liquidated damages imposed upon Purchaser as a result of Vendor's acts or omissions.

6. Federal Contractor Requirements.

(a) Vendor and Purchaser, each for its own part, shall comply with and give all representations and further assurances required by any law or regulation, including (without limitation) those relating to federal contracts and subcontracts, to the extent applicable to the Purchase Order, including (without limitation) the following: (1) the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45), and regulations thereunder; (2) the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 327-333), and regulations thereunder; (3) the Service Contract Act (41 U.S.C. §§ 351-358) and regulations thereunder; (4) the Buy American Act (41 U.S.C. § 10a); and (5) all applicable safety, health and environmental regulations.



(b) Unless the Purchase Order is exempt therefrom, Vendor and Purchaser each hereby certifies to the other, in accordance with 41 C.F.R. 60-1.8(b), that it does not and shall not maintain any facilities provided for its employees in a segregated manner or permit its employees to perform Services, at any location under its control, where segregated facilities are maintained, and that it shall require its nonexempt subcontractors to furnish a similar certification prior to the award of any non-exempt subcontract.

(c) Vendor shall comply with all security requirements of Purchaser or the U.S. Government.

(d) Vendor shall notify Purchaser immediately if Vendor is debarred, suspended, or proposed for debarment as a federal contractor.

(e) Purchaser and the Vendor each hereby certifies to the other that each will make a good faith effort to maintain a Drug Free Workplace. Controlled Substances are defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and are further defined at 21 CFR 1308.11 through 1308.15.

7. FAR and DFAR Flow-Down Clauses.

(a) Incorporation of FAR and DFAR Clauses.

The Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) clauses referenced below in subsection (d) are incorporated herein by reference, with the same force and effect as if they were stated in full text, and are applicable, including any note following the clause citation, to this purchase of Goods and/or Services. 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 in connection with which the purchase is being made, the date or substance of the clause incorporated by said prime contract shall apply instead.

When applying FAR or DFARS clauses to the Purchase Order, all appropriate terms shall be substituted and supplemented to retain the intent of the clause after it has been flowed down to Vendor, e.g.: “Purchaser” shall be substituted for “Government” or “United States”; “Purchaser’s Purchasing Agent” shall be substituted for “Contracting Officer,” “Administrative Contracting Officer” and/or “ACO”; “and Purchaser” shall be inserted after “Government” or “Contracting Officer” as appropriate; and “or Purchaser” shall be inserted after “Government” as appropriate.



Terms relating to FAR and /or DFARS clauses shall have the meanings stated in FAR Part 2 (48 CFR Part 2).

The full text of the FAR and DFARS clauses can be found at:
<https://www.acquisition.gov/far/>.

(b) Amendments Required by the Prime Contract.

Vendor shall, at the request of Purchaser, accept amendments to the Purchase Order to incorporate additional provisions herein or to change provisions hereof, as Purchaser 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 Purchase Order causes an increase or decrease in the estimated price of, or the time required for, performance of any part of the Work under the Purchase Order, an equitable adjustment shall be made pursuant to Part A, section 3 (“Changes and Termination”) of these Terms and Conditions.

(c) Preservation of the Government’s Rights.

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

(d) FAR and DFARS Flow-Down Clauses.

(1) Flow-Down Clauses for Commercial Items. The following FAR clauses apply to each purchase of Goods and/or Services that are Commercial Items as defined in the FAR (see 48 CFR Part 2.101), provided the threshold for application for each clause, if any, is reached:

- | | |
|-----------|--|
| 52.203-15 | Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 |
| 52.219-8 | Utilization of Small Business Concerns |
| 52.222-26 | Equal Opportunity (subcontracts above \$10,000) |



- 52.222-35 Equal Opportunity for Veterans (subcontracts above \$100,000)
- 52.222-36 Affirmative Action for Workers with Disabilities (subcontracts above \$15,000)
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (subcontracts above \$10,000)
- 52.222-50 Combating Trafficking in Persons
- 52.244-6 Subcontracts for Commercial Items and Commercial Components (Jul 2004)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels

(2) Flow-Down Clauses for Non-Commercial Items. In addition to the clauses listed in section 7(d)(1) immediately above, the following FAR and DFARS clauses apply to each purchase of Goods and/or Services that are Non-Commercial Items, provided the threshold for application for each clause, if any, is reached:

FAR Clauses:

- 52.203-7 Anti-Kickback Procedures (subcontracts above \$150,000)
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (subcontracts above \$150,000)
- 52.215-2 Audit and Records – Negotiation
- 52.227-11 Patent Rights – Ownership by the Contractor

DFARS Clauses:

- 252.227-7013 Rights in Technical Data – Non-Commercial Items
- 252.227-7016 Rights in Bid or Proposal Information
- 252.227-7037 Validation of Restrictive Markings on Technical Data

(3) Flow-Down Clauses for Service Contracts. The following FAR clauses apply to each purchase of Services:

- 52.236-13 Accident Prevention
- 52.222-41 Service Contract Act of 1965 (if applicable to prime contract)



(4) In addition to the clauses listed in subsections (d)(1) through (d)(3) above, the following FAR and DFARS clauses apply to each purchase of Goods and/or Services if the threshold for application for a given clause, if any, is reached, and if a version of a given clause is incorporated into the prime contract to which the Purchase Order pertains:

FAR Clauses:

- 52.203-6 Restrictions on Subcontractor Sales to the Government (Jul 1995)
- 52.204-2 Security Requirements (Aug 1996)
- 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (Dec 2001)
- 52.223-14 Toxic Chemical Release Reporting (Aug 2003)
- 52.224-1 Privacy Act Notification (Apr 1984)
- 52.224-2 Privacy Act (Apr 1984)
- 52.227-1 Authorization and Consent (Jul 1995)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)
- 52.227-14 Rights in Data – General (Jun 1987)
- 52.229-3 Federal, State and Local Taxes (Apr 2003)
- 52.233-1 Disputes (Alt I)(July 2002)
- 52.233-3 Protest after Award (Aug 1996)(Alt I)
- 52.237-3 Continuity of Services
- 52.243-1 Changes – Fixed Price (Aug 1987)(Applicable Alt clause depends on which Govt contract is involved)
- 52.245-1 Government Property
- 52.245-2 Government Property (Fixed-Price Contracts)(May 2004)
- 52.246-4 Inspection of Services – Fixed Price
- 52.249-2 Termination for Convenience (May 2004)
- 52.249-8 Default (Fixed-Price Supply and Service)(Apr 1984)

DFARS Clauses:

- 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (March 1999)



- 252.211-7003 Item Identification and Evaluation (Jan 2004)
- 252.225-7001 Buy American Act and Balance of Payments Program (Apr 2003)
- 252.243-7001 Pricing of Contract Modifications (Dec 1991)
- 252.243-7002 Requests for Equitable Adjustment (Mar 1998)(applicable to
LMSR and Martin prime contracts)
- 252.247-7023 Transportation of Supplies by Sea (May 2002)
- 252.247-7024 Notification of Transportation of Supplies by Sea (Mar 2000)

8. Permits and Approvals. All necessary permits, bonds, testing, inspection and approval of materials or workmanship by the proper authorities is to be provided and arranged by Vendor at no additional cost to Purchaser unless authorized herein.

9. Time. Time is hereby declared to be of the essence of the Purchase Order.

10. Drawings. Vendor shall furnish for the approval of Purchaser all shop drawings as Purchaser may require, and all workmanship and materials shall be in strict accordance with said approved drawings. All plans, specifications and drawings provided by Purchaser to Vendor in connection with the Purchase Order or provided by Vendor especially for performance hereunder shall be the property of Purchaser and may not be used at any time for any other purpose by Vendor.

11. Advertising. Vendor shall not, without first obtaining the written consent of Purchaser, in any manner advertise or publish the fact that Vendor has either contracted to furnish or has sold to Purchaser the Goods or Services.

12. Taxes. Unless otherwise expressly provided on the face of the Purchase Order, the Vendor shall pay all United States, County, City or other taxes, assessments or duties assessed, made or levied against the material to be used in the performance of the work covered by the specifications, or imposed in consequence of its sale to the Vendor.

13. Transportation Costs. If the Purchase Order calls for payment of any transportation costs by Purchaser, Purchaser shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Vendor shall be accountable for and shall pay any excess transportation costs arising from Vendor's failure to make delivery to the f.o.b. point or to follow shipping instructions furnished by Purchaser.

14. No Consequential Damages. Neither Purchaser, nor its parent, subsidiary or affiliated



companies, nor their officers, directors or employees shall be liable to Vendor for any consequential or indirect damages, including without limitation loss of profits, demurrage and loss of use, whether resulting from negligence or breach of this contract or otherwise, even where the possibility of such damages was foreseeable by either or both parties.

15. Invoices and Payment. To be paid, Vendor must have current, accurate and complete vendor information on file with Purchaser. All invoices must be submitted promptly, not later than 15 business days from the completion of the Services rendered and/or Goods delivered. All invoices must be submitted with the correct Purchase Order number referenced on the invoice. Purchaser shall not be required to pay partial invoices or make advance payments unless doing so is agreed upon in advance and that agreement is stated on the Purchase Order. Normal payment terms are Net 30 days after receipt of proper invoice by Purchaser at its Concord, CA office. The invoice for services must show start and completion dates, the general statement of work performed and parts provided. A Receipt Confirmation must accompany the invoice in order for payment to be made. For Services, the Receipt Confirmation must be signed by the Port Engineer; for Goods, the Receipt Confirmation must be signed by the Port Engineer, Storekeeper, Captain, Chief Engineer, Chief Mate or Chief Steward. Any invoice received without this Receipt Confirmation will be returned. Vendor's invoices shall indicate insurance, delivery or transportation charges and taxes, if any, separately from the purchase price of the Goods at the place of origin.

16. Purchase Orders. Every Purchase Order is unique and the Vendor should read the scope of work carefully. A Purchase Order must be issued before performance can begin. Any questions concerning the issued Purchase Order should be directed to the Patriot Contract Services Purchasing Agent who issued the Purchase Order.

17. Patent Infringement. Vendor shall defend, indemnify and hold harmless Purchaser and its subsidiary and affiliated companies, and each of their directors, officers and employees, against all liability, damage and expense, including without limitation court costs and reasonable attorneys' fees, caused by actual or claimed trademark, patent or copyright infringement in connection with the manufacture, sale or use of the Goods or the Services provided (except to the extent that any specifications of Purchaser prevent Vendor from supplying non-infringing Goods and Vendor has notified Purchaser in writing of same). In the event of infringement Vendor shall, at its option, either procure Purchaser's right to continue using the Goods or promptly replace the Goods or any part of them with a non-infringing substitute satisfactory to Purchaser.



18. Conflict of Contract Terms. The provisions set forth herein shall, unless specifically stated in writing to the contrary, apply to all Goods supplied and Services performed by Vendor, its employees, agents or representatives. In the event that the United States of America is a party to a contract with Purchaser which covers Goods or Services to be provided by Vendor, the terms and conditions in such a contract shall prevail over inconsistent terms and conditions contained herein.

19. Miscellaneous. Acceptance of this contract by Vendor is hereby expressly limited to the terms and conditions hereof and no terms or conditions contained in any written or other acceptance hereof by Vendor, which are in addition to, or different from, those set forth herein, shall in any way affect or act to modify or amend any of the terms and conditions hereof. The Purchase Order shall be governed by the laws of the State of California, excluding any conflict of laws provisions, except that any provision in these Terms and Conditions that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (iii) that is 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 contract appeals, and quasi-judicial agencies of the federal government. It is further agreed that all disputes shall exclusively be resolved in the Superior Court of the State of California, Contra Costa County, or in the U.S. District Court for the Northern District of California, and the parties hereto agree to submit to the jurisdiction and venue of those courts. Additionally, the parties hereto agree that any and all costs of the prevailing party in any dispute, including, without limitation, reasonable attorney's fees, court costs and expert witness fees, shall be borne by the losing party. Neither party shall assign its rights or delegate its duties under the Purchase Order without the prior written consent of the other. No change or amendment of the Purchase Order shall be made except by a written amendment or revised Purchase Order. If any provision of the Purchase Order is determined by a court of competent jurisdiction to be void or unenforceable, such provision shall be severed and the balance of the Purchase Order shall remain in full force and effect. A waiver of any failure of performance of any of the terms and conditions of the Purchase Order shall be limited to the acts constituting such failure of performance. The party entitled to the benefit of the waived performance shall be as fully entitled thereto as to further performance as if there had been no waiver.

B. PROVISIONS APPLICABLE ONLY TO GOODS.

In addition to the provisions of Part A above, the following terms and conditions



shall apply to the sale of Goods hereunder:

1. Conforming Goods. Vendor shall, at its own risk and expense, furnish the Goods in strict accordance with the specifications of Purchaser appearing on the face of the Purchase Order or incorporated therein by reference. The Goods shall have been manufactured or fabricated in a workmanlike manner using merchantable parts and materials. Vendor shall provide brand-name Goods unless otherwise specified on the Purchase Order. The Goods shall also be suitably packaged for normal transportation and handling and shall bear all markings and labels required by applicable law and regulation, all at no extra cost to Purchaser. No charges shall be accepted by the Purchaser for crating, boxing, cartage, drayage, storage, or like services, unless specifically agreed to in writing prior to performance hereunder. Vendor shall not utilize any of the following as packing materials: asbestos, excelsior, newspaper, shredded paper (including without limitation waxed paper, computer paper and similar materials) or loose fill polystyrene. Vendor shall indemnify Purchaser against all liability, loss and expense including without limitation attorneys' fees and court costs, arising out of the failure of the Goods to conform to the condition warranted under these Terms and Conditions or failure of Vendor to perform any term, covenant, condition or provision of these Terms and Conditions.

2. Delivery and Delay. If a delivery date or a period within which delivery is to occur is provided on the face of the Purchase Order, Vendor shall deliver the Goods by that date and time; such delivery date and time is a material term hereof. Unless otherwise stated in the Purchase Order or otherwise agreed in advance, Goods must be delivered between the hours of 8 a.m. to 11 a.m. or 1 p.m. to 4 p.m. The Vendor shall promptly notify Purchaser's Port Engineer in the event the goods will not be delivered on time; such notice shall not however relieve Vendor of liability for failure to meet the prescribed deadline. Purchaser may, at its option, cancel the Purchase Order or any part of it by giving Vendor actual notice thereof if, for any reason, delivery of the Goods in accordance with the terms of sale is materially delayed. Materiality shall be determined with reference to Purchaser's intended use of the Goods and not Purchaser's assets or business. If no delivery date or period of delivery is specified on the Purchase Order, Purchaser may cancel the Purchase Order or any part of it if the Goods are not delivered in accordance with the terms of a written notice given to Vendor by Purchaser advising of Purchaser's intent to cancel unless delivered by a specified date. Purchaser may refuse to accept Goods or any part of them which do not conform to applicable specifications or warranties or any of the terms or conditions hereof. Purchaser shall have the right, upon reasonable notice and during Vendor's normal business hours, to have access to Vendor's premises for the purpose of inspection of work in progress in connection with the Goods. Whenever any event or potential event delays or threatens to delay timely delivery of the Goods, Vendor shall give prompt notice thereof to Purchaser. Shipping tickets and/or packing slips



must show in detail any Goods shipped and must accompany all deliveries. If required by Purchaser, Vendor shall furnish a bill of sale and certificate of no liens for the Goods in a form satisfactory to the Purchaser.

3. Warranties.

(a) Vendor warrants that at the time of transfer of title to the Goods to Purchaser (1) Vendor has good and marketable title to the Goods and the Goods shall be free and clear of all defects of title, liens or security interests; (2) the Goods are being sold in compliance with the Robinson-Patman Act; (3) the Goods are conforming goods in all respects and are free from defects in workmanship, design and materials; and (4) the Goods are merchantable, of the quality specified, and fit for the purposes intended. All implied warranties of the California Commercial Code and warranties implied by usage of trade are reserved by Purchaser and incorporated herein.

(b) If, upon inspection by Purchaser, or through failure of the Goods in use, any defects in workmanship, design or materials appear within 1 year of receipt by Purchaser, Vendor shall at its expense promptly cause the repair or replacement of all such defects to the satisfaction of Purchaser. Without limiting any other rights or remedies granted to Purchaser by law, all of which are reserved, Purchaser shall be entitled to recover from Vendor all damages resulting from Vendor's breach of contract or breach of warranty, including but not limited to incidental and consequential damages.

4. Risk of Loss; Title.

(a) Risk of Loss of the Goods shall be borne by the party holding the title thereto at the time of loss; provided, however, nothing herein is intended to relieve Vendor of any responsibility for harm suffered by Purchaser by reason of loss or damage to the Goods in transit caused by acts or omissions of Vendor constituting a defense by the transporting carrier. Purchaser and Vendor shall each cooperate fully with the other or its insurer in connection with the filing and enforcing of claims for loss or damage to the Goods while in transit.

(b) Title and risk of loss to the Goods shall pass to Purchaser upon Purchaser's acceptance of delivery at the place specified on the face hereof.

5. Non-Exclusivity. It is expressly understood and agreed that the Purchase Order and any amendments or extensions thereof, do not constitute a "requirements contract" under the



California Commercial Code (or any other similar or related law), nor does it constitute any obligation by either party hereto to deal exclusively with the other.

6. Insurance. The following insurance requirements apply to Vendors providing Goods:

(a) Vendor, at its sole cost (including the cost of all deductibles), shall procure and maintain in force the following insurance:

(i) Commercial general liability insurance, with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall cover bodily injury and property damage liability, including coverage for premises and operations; products and completed operations; broad form property damage, including property in the Vendor's care, custody and control. The policy shall be endorsed to cover the contractual indemnity obligations of these Terms and Conditions. Vendor shall name Purchaser and its affiliated and subsidiary companies under a Vendor's Endorsement, CG 2015 or equivalent; and

(ii) Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$1,000,000 each accident or loss.

(b) The foregoing insurance policies shall name Purchaser, its affiliated companies, and the United States of America as additional assureds, and shall be endorsed to provide Purchaser with thirty (30) days' notice prior to cancellation or material change in coverage. The policies shall provide that there is no recourse against the USA for payment of premium. The foregoing insurance policies shall be issued by insurance companies with an AM Best rating of A- or better and otherwise in all ways acceptable to Purchaser, and shall be subject to Purchaser's approval as to limits, deductibles, form and substance. Vendor shall provide Purchaser with certificates of insurance evidencing the foregoing insurance policies prior to commencement of performance of the Purchase Order, and shall provide copies of all insurance policies upon request within five days. The N.Y. Suable Clause or Service of Suit U.S.A. Clause must be confirmed for any London underwriter placements. Purchaser allowing Vendor to commence providing Goods without providing the required certificates shall not be deemed to be a waiver of any of Purchaser's rights with respect to insurance.

(c) If Vendor fails to procure and/or maintain any of the insurance required of it by this section, it shall indemnify Purchaser to the extent Purchaser suffers or incurs loss, damage, liability, or expense which would not have been suffered or incurred except for such failure. If



Vendor shall, by any act or omission, vitiate or invalidate any of the aforesaid policies required to be obtained by such party, Vendor shall indemnify Purchaser to the extent Purchaser otherwise would have been covered or protected by said insurance.

C. PROVISIONS APPLICABLE ONLY TO SERVICES:

In addition to the provisions of Part A above, the following terms and conditions shall apply to the sale of Services hereunder:

- 1. Vendor Status/Workmanship.** Except as otherwise provided in the Purchase Order or any specifications covering the work to be performed by the Vendor, the Vendor as an independent contractor and not as an agent or employee of Purchaser shall furnish all labor, materials, supplies, equipment, facilities and services required to perform and fully complete, and shall perform and fully complete, all Services to meet the requirements of the American Bureau of Shipping, the United States Coast Guard, and all governmental agencies or other regulatory agencies having jurisdiction, and to the satisfaction of Purchaser, in order that the vessel at the time of the completion of the work may have the highest classification and rating for a vessel of its type by the American Bureau of Shipping, insofar as the classification and rating of the vessel may be dependent upon the Services. All workmanship and/or material is to be of the best quality and in accordance with the best commercial marine practices.

- 2. Vendor Removals.** Unless otherwise provided herein, if the removal or shifting of any parts of the vessel or her fittings, stores, etc., is required for the carrying out of the Services, the same shall be done by the Vendor and all such removals shall be subsequently replaced and any damage or loss resulting therefrom shall be made good by the Vendor at its expense. Should any portion of the vessel's structure, housing, fixtures, or equipment require alteration in order to carry out the Services, the Vendor shall make such alteration together with necessary replacement without additional cost to Purchaser.

- 3. Commercial Marine Practice.** The Vendor shall be responsible for and shall pay all expenses of shifting, dry docking, wharfage, towage, dockage, running lines, water testing and/or refilling tanks and/or boilers, or disposal and removal of garbage and other such items to the extent the same are the Vendor's responsibility in accordance with normal commercial marine practice. Should the Services make it impracticable to use the ship's machinery and/or boiler plant for supplying steam and/or electric lighting, the Vendor shall supply such steam and/or electric lighting as may be necessary without extra charge. Where Vendor is responsible for shifting or towing, Vendor shall provide necessary tow preparation, towing gear, tugs, pilots,



riding crew, and line handlers plus all required equipment and permits to pick up the vessel at its lay berth and deliver to Vendor's facility as a Dead Ship. It shall be the Vendor's responsibility (no less than 48 hours prior to towing) to:

- 1.) Obtain USCG load-line exemption and "Permit to Proceed."
- 2.) Obtain standard towing liability insurance.
- 3.) Provide documents to the SM COTR that verify that items (1) and (2) above have been completed.

For all tows to/from Vendor's repair facility, Vendor shall provide an independent marine consultant recognized by Vendor's insurance carrier and comply with recommendations for suitability for a tow trip.

All vessel moves shall be for the Vendor's Account. All disconnections and re-connections of services to the vessel are for the Vendor's Account. Vendor is to install shaft and rudder locks prior to each tow. Any alterations to D/H System or weather closures required for tow shall be restored to original configuration upon the vessel's return to lay berth. The riding crew shall be equipped with three (3) portable radio transceivers of same frequency, one at the vessel's bow, one at the stern, and one with attendant alongside the Pilot on the bridge.

The Vendor is responsible for coordination with the port authorities and the cognizant authority at the lay berth. Vendor shall provide tugs, pilots and line handlers for all arrivals, departures, and as required to shift the vessel for performance of Services during the contract period, and shall provide labor to handle lines and gangway for all moves.

4. Tank Cleaning. All tanks under alteration and/or repair shall be cleaned and/or washed and/or steamed out by the Vendor as may be necessary before any work is done thereto, and the oil or water tightness of the portion of the tanks affected by repairs shall be proven to the satisfaction of the American Bureau of Shipping and Purchaser.

5. Vessel Closures in Drydock. While at drydock, the Vendor shall be responsible for the proper closing of all openings in the vessel's underwater body and the keeping of the crew adequately informed thereon, provided however, that that crew shall notify the Vendor prior to making any changes in openings, transfers of weights, or shifts of ballast.

6. Warranties.

(a) Vendor shall keep the Property free and clear of all liens, security interests, encumbrances and claims of every nature, including statutory and maritime liens in favor of



workmen, materialmen, subcontractors or others arising by, through or under Vendor. Vendor shall discharge all such liens and other claims at once. Vendor hereby waives all liens, including without limitation maritime liens and whether possessory or otherwise, in its favor which would otherwise attach to the Property.

(b) In case any work done or material furnished shall, within one (1) year from the date of the acceptance of the work or materials by Purchaser, prove defective or deficient, and be so reported to the Vendor within that time, such defects or deficiencies shall, at the Vendor's expense, be made good to the satisfaction of Purchaser. Without limiting any other rights or remedies granted to Purchaser by law, all of which are reserved, Purchaser shall be entitled to recover from Vendor all damages resulting from Vendor's breach of contract or breach of warranty, including but not limited to incidental and consequential damages. Purchaser will, if and when practicable, afford the Vendor an opportunity to correct such defects or deficiencies; but when, because of the condition or location of the vessel or other Property or for any other reason, it is impracticable or undesirable to return the vessel to the Vendor, such correction shall be effected at the Vendor's expense at such other location or locations and by such other contractor or contractors as Purchaser may determine.

7. Care of the Property. At all times during the term of the Purchase Order, Vendor shall protect the Property from any and all damage. At all times while any Property is on Vendor's premises, Vendor shall assume all risk of damage to or loss of the Property (or of any machinery, equipment, materials and outfitting obtained or intended for the Property) from any cause whatsoever except the sole negligence of Purchaser. In case any of the vessel's machinery, equipment or fittings, such as winches, pumps, rigging, or pipe lines, is used by the Vendor, Vendor shall be held responsible for their reconditioning, if necessary, and shall make good any damage resulting from such use.

8. Vendor Safety Responsibilities. The Vendor shall perform all Services in a safe manner. The Vendor shall inspect all work areas and use its best efforts to prevent accidents, injury or damage to all employees, persons and property and to the portion of the vessel upon which the work is done; and the Vendor further agrees that through its foremen, supervisors, or other responsible representatives it will notify Purchaser at once if any condition is or creates an unsafe, dangerous or improper place in which to work and the Vendor assumes the responsibility for seeing that such condition is corrected before proceeding with the Services.

9. Owner's Salvage/Scrap Rights. All salvage, scrap and other material removed from the vessel shall be the property of Purchaser unless otherwise specified.



10. Insurance. The following insurance requirements apply to Vendors providing Services:

(a) Vendor, at its sole cost (including the cost of all deductibles), shall procure and maintain in force the following insurance:

(i) U.S. Longshore and Harbor Workers' Compensation Act (U.S. L & H) coverage and/or workers' compensation coverage for Vendor's employees, contractors and agents as required by law;

(ii) Commercial general liability insurance, with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall cover all operations by, or on behalf of, the Vendor including all operations by a subcontractor of Vendor. Such insurance shall cover bodily injury and property damage liability, including coverage for premises and operations; products and completed operations; broad form property damage, including property in the Vendor's care, custody and control. The policy shall be endorsed to cover the contractual indemnity obligations of these Terms and Conditions.

(iii) If Vendor is providing ship repair services and unless otherwise noted in the Purchase Order, Ship Repairer's Legal Liability Insurance, with limits of at least \$5,000,000, and including sudden and accidental pollution liability coverage;

(iv) Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$1,000,000 each accident or loss; and

(b) The foregoing insurance policies shall name Purchaser, its affiliated companies, and the United States of America as additional assureds, except that the U.S. L&H/workers compensation policy shall provide for a waiver of subrogation in favor of Purchaser and its affiliated companies. The foregoing insurance policies shall be endorsed to provide Purchaser with thirty (30) days' notice prior to cancellation or material change in coverage. The policies shall provide that there is no recourse against the USA for payment of premium. The foregoing insurance policies shall be issued by insurance companies with an AM Best rating of A- or better and otherwise in all ways acceptable to Purchaser, and shall be subject to Purchaser's approval as to limits, deductibles, form and substance. Vendor shall provide Purchaser with certificates of insurance evidencing the foregoing insurance policies prior to commencement of performance of the Purchase Order, and shall provide copies of all insurance policies upon request within five days. The N.Y. Suable Clause or Service of Suit U.S.A. Clause must be confirmed for any



London underwriter placements. Purchaser allowing Vendor to commence performing Services without providing the required certificates shall not be deemed to be a waiver of any of Purchaser's rights with respect to insurance.

(c) If Vendor fails to procure and/or maintain any of the insurance required of it by this section, it shall indemnify Purchaser to the extent Purchaser suffers or incurs loss, damage, liability, or expense which would not have been suffered or incurred except for such failure. If Vendor shall, by any act or omission, vitiate or invalidate any of the aforesaid policies required to be obtained by such party, Vendor shall indemnify Purchaser to the extent Purchaser otherwise would have been covered or protected by said insurance.

11. Inspection by Vendor. The nature and location of the Services and all conditions which may affect their completion have been carefully inspected and considered by Vendor, who assumes all risk of loss and unanticipated expense, however caused and whether or not foreseeable.

12. Financial Capability Requirement. The Vendor shall supply, upon request of Purchaser, evidence satisfactory to Purchaser that the Vendor is financially able to satisfy all of its obligations relative to the Services.

13. Notice to Proceed/Performance Period. The Vendor shall perform the Services within the time period set forth on the Purchase Order. Performance time shall commence at the time set forth in the Purchase Order (or if no time is specified, time shall commence when the Purchase Order is awarded) and to cease only when all Services specified therein have been completed to the satisfaction of Purchaser and all Vendor's equipment, tools and all rubbish have been removed from the vessel or other place of work. The Vendor's time is subject to extension in case of strike, or labor difficulties, or fire or explosion or causes beyond the Vendor's control. The Vendor shall promptly notify Purchaser's Port Engineer in the event performance will not be completed on time; such notice shall not however relieve Vendor of liability for failure to meet the prescribed deadline. It is mutually agreed that the waiving of, or the granting extension of time on one or more items of the Services shall not abrogate the contract as a whole, nor shall it relieve the Vendor from the obligation of complying with all the other terms and conditions of the Purchase Order and these Terms and Conditions in the time and manner specified. The issuance of requisitions for additional work shall in no way relieve the Vendor from complying with the terms of the contract unless specifically agreed in writing.