



USCG Arctic Security Cutter (ASC) Program

Terms and Conditions

Bollinger Shipyards Lockport, L.L.C.

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ARCTIC SECURITY CUTTER (ASC) PROGRAM SUPPLEMENT TO THE PURCHASE ORDER TERMS & CONDITIONS

These terms modify and are in addition to the Standard Government Purchase Terms available at [PO Terms & Conditions - Bollinger Shipyards](#)

1.0 DEFINITIONS

(This SECTION replaces, in its entirety, the Definitions Clause of Part A - Bollinger's STANDARD Purchase order terms and conditions)

- a) "Bollinger" and "Buyer" means the Bollinger company shown on the face of the particular Purchase Order.
- b) "Seller" or "Seller" means the company supplying the equipment and/or services detailed in a Purchase Order.
- c) The "Government," "Owner," or "USG" means the United States of America and includes the U.S. Government and any duly authorized representative thereof.
- d) "The Prime Contract" means the U.S. Government contract for the ASC program, awarded to Bollinger by the USG.
- e) "Contract" or "Agreement" means the contract or agreement between Bollinger and Seller.
- f) "Purchase Order" means any order issued from time to time by a Bollinger company for services, labor, materials or products, and hereinafter sometimes abbreviated as "P/O".
- g) "Days" means calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day. When used, "working day" excludes weekends and U.S. Federal holidays.
- h) "Delivery Date" means the date specified by Bollinger in a PO by which goods shall be delivered or services shall be completed by Seller.
- i) The term "FAR" means the Federal Acquisition Regulation as printed in Chapter 1 of Title 48 of the Code of Federal Regulations. All references to the FAR in this contract shall be deemed also to include the Defense FAR Supplement (DFARS), unless clearly indicated otherwise.
- j) The term "lower-tier" subcontractor, Sellers, or suppliers means any contractual agreement entered into by Seller, the purpose of which is to provide goods or services that are required to fulfill the obligations under the Agreement or Purchase Order.

2.0 APPLICABLE LAWS AND LICENSES

- a) Regardless of its place of negotiation, execution, or performance, this Contract shall be governed by the laws of Louisiana.

3.0 CONFLICT

- a) In the event that a conflict or ambiguity arises in the interpretation of any contract documents, the Seller shall formally notify Buyer of the conflict for clarification, or correction as appropriate.
- b) Conflicts or ambiguities shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items:
 - i) Provisions required by statute or regulation;
 - ii) Provisions of the Government contract included in this Agreement;
 - iii) Any special provisions of this P/O;
 - iv) these Terms & Conditions;
 - v) statement of work;
 - vi) specifications; and
 - vii) drawing(s).
- c) In the event a Master Work Contract is effective between the parties, these Terms and Conditions supersede the Master Work Contract for any P/O issued for the ASC program.
- d) Notwithstanding anything herein, the Seller shall be bound to the Buyer to the same extent that Buyer is bound to the U.S. Government or other federal agency under the Contract, for those portions of the Contract applicable to the P/O.
- e) Additional or differing terms or conditions proposed by Seller are objected to by Buyer and have no effect unless expressly accepted in writing by Buyer.

4.0 INSURANCE

In the event Seller is required to enter Bollinger's facilities or other location to perform work, Seller agrees to carry the following insurance throughout the entire period of this Contract for the benefit of Bollinger, their customers and persons for whom Bollinger and its contractors are performing work or furnishing services for any reason at any time, and the respective officers, directors, employees, contractors, agents and parent, subsidiary and affiliated companies of all the foregoing (collectively the "Bollinger Group"):

- i) Worker's Compensation Insurance that complies with the laws of every State in which work is performed and which includes an endorsement providing coverage required by the U. S. Longshoremen's and Harbor Workers' Compensation Act, as amended. Such insurance shall be endorsed as primary to and non-contributory with any insurance carried by Bollinger Group, shall waive underwriters' rights of subrogation against Bollinger Group, and shall be endorsed to treat an "in rem" claim as a claim against the employer. Such insurance shall also contain an alternate/statutory employer endorsement naming Bollinger Group as alternate and statutory employers and providing coverage to Bollinger as alternate and/or statutory employers.
- ii) Employer's Liability Insurance with limits of not less than \$1,000,000 each accident, each employee. Such insurance shall be endorsed to provide maritime liability coverage including, but not limited to, coverage for claims under the Jones Act,

- General Maritime Law, Death on the High Seas Act, Outer Continental Shelf Lands Act and state law incorporated thereby. Such insurance shall name Bollinger Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Bollinger Group, shall be endorsed to treat an “in rem” claim as a claim against the employer, and shall waive underwriters’ rights of subrogation against Bollinger Group.
- iii) Business Automobile Liability Insurance with combined bodily injury and property limits of not less than \$1,000,000 each occurrence, including coverage for all owned, non-owned and hired vehicles, for operations conducted by Seller in all jurisdictions, both foreign and domestic. Such insurance shall name Bollinger Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Bollinger Group and shall waive underwriters’ rights of subrogation against Bollinger Group.
 - iv) Comprehensive General Liability Insurance under the occurrence form with limits of not less than \$1,000,000 combined single limits, providing coverage for, among other things, bodily injury, illness and property damage. Such insurance shall delete all watercraft, Insured’s Work/Product, Impaired Property and Pollution exclusions, and shall be endorsed to provide products/completed operations coverage, ship repairers’ coverage, “in rem” coverage and contractual liability coverage (including coverage for the defense and indemnity obligations undertaken in this contract). Such insurance shall also name Bollinger Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Bollinger Group and shall waive underwriters’ rights of subrogation against Bollinger Group.
 - v) If Seller rents, leases or utilizes vessels, barges or other marine equipment and/or marine services hereunder, Seller, in addition to all other insurance coverages required herein, shall carry Hull Insurance on the vessels, barges and other marine equipment to the full value thereof, Protection & Indemnity Insurance with primary limits of \$1,000,000 per occurrence, tower’s legal liability for tugboats utilizing primary limits of \$1,000,000 per occurrence and excess liability coverage in the amount of \$10,000,000 over and above the P & I and tower’s liability primary limits. Such insurance shall be endorsed to waive all “owner” and “as owner of” clauses and any other clauses that purport to limit insurers’ coverage obligation to the value of the vessel. Such insurance shall also name Bollinger Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Bollinger Group and shall waive underwriters’ rights of subrogation against Bollinger Group.
 - vi) Excess Liability Insurance coverage with limits of at least \$5 Million on following form excess of the coverages set out in the paragraphs above.

If engineering, design or other professional services (including, but not limited to, any of the following associated with the provision of services, supplies, or products; the evaluation of technical specifications, the evaluation of legal or regulatory standards, the evaluation of performance standards, and/or the performance or evaluation of calculations or drawings) are provided in connection with a Purchase Order, Professional Liability Insurance will be provided

with limits of not less than \$5,000,000 to cover errors and omissions for such Professional service.

All insurance required under this Contract shall be carried by Seller with insurance companies rated not less than Best's "A-VII" or which are otherwise acceptable to Bollinger per written confirmation. All of the policies referenced in this Contract shall provide at least thirty (30) days written notice of cancellation of policy or of any other material change that would reduce the insurance or liability of the respective policies. All policies shall be endorsed and/or written to afford the Bollinger Group no less coverage than that provided to the named insured, and shall not limit coverage based on the completion of Seller's operations or the existence of Bollinger Group fault or strict liability. If Seller employs any subcontractors, then Seller will require that Seller's subcontractors obtain the same insurance policies and conditions in favor of the Bollinger Group.

If any of the policies of insurance required above fail to afford coverage to the Bollinger Group for any reason, Seller shall assume the role of insurer.

Seller's compliance, or its failure to comply, with the insurance provisions of this Agreement shall not relieve or limit its obligation to indemnify or hold the Bollinger Group harmless where and to the extent so required by the provisions of this Agreement.

5.0 STANDARDIZATION

- a) The U.S. Government has expressed a desire to procure multiple vessels under the ASC program. It is extremely important to the U.S. Government to maintain standardization within the ASC fleet.
- b) Equipment supplied under the ASC program for follow-on vessels shall be identical to that supplied for the first vessel, unless otherwise approved in advance in writing by Buyer.
- c) Any cost incurred by Buyer for changes proposed by Seller shall be to Seller's account. Changes shall include, but not be limited to, changes to the model number, components, parts, part numbers, technical data packages, software, firmware, hardware, VFI, or similar items.

6.0 ASSIGNMENT

- a) Any assignment of Buyer's contract rights or delegation of Seller's duties shall be void, unless prior written consent is given by Buyer.

7.0 COMMUNICATION WITH BUYER'S CUSTOMER

- a) Buyer shall be solely responsible for formal contractual interface with the Buyer's customer, including the U.S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.

8.0 CONTRACT DIRECTION

- a) Buyer personnel may, from time to time, render assistance or give advice or discuss or affect an exchange of information with Seller's personnel concerning the work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

- b) Except as otherwise provided herein, all notices to be furnished by Seller shall be sent to the appropriate Buyer Procurement Representative.

9.0 ELECTRONIC CONTRACTING

- a) The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any Acknowledgement thereof, on the basis that this Contract or Acknowledgement contains an electronic signature.

10.0 INDEPENDENT CONTRACTOR RELATIONSHIP

- a) Seller is an independent contractor in all of 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 Buyer.
- b) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

11.0 ACCESS TO SELLER'S FACILITY

- a) Officers, employees, and associates of Buyer with the U.S. Government and their subcontractors, shall, as authorized by Buyer, have at all reasonable times, admission to the Seller's facility, where and as required, and be permitted within the Seller's facility to perform and fulfill their respective obligations to the U.S. Government.
- b) The Seller shall make reasonable arrangements with Buyer or contractors of the U.S. Government that have been identified and authorized by Buyer to be given access to the Seller's facility, office space, work areas, storage or shop areas, or other facilities and services reasonable and necessary for the performance of the respective responsibilities involved.

12.0 ACCESS TO BUYER'S FACILITY

- a) Provided Seller has met the insurance requirements of the Insurance article of this T&C, Seller may, with Buyer's approval and permission:
 - i) access, enter, board and/or utilize Buyer's and its contractors' premises, dry-docks and/or vessels (hereinafter referred to as "Access");
 - ii) access, enter, board and/or utilize Buyer's customers' premises and/or vessels (hereinafter also referred to as "Access"); and/or
 - iii) furnish labor, services, equipment, or materials on Buyer's premises, on vessels at, adjacent to or dry-docked on Buyer's premises, on any vessels owned by Buyer, its customers and/or contractors and/or on vessels undergoing sea trials or other testing .
- b) Seller's Access to Buyer's facility is conditioned on Seller's agreement to and compliance with the following:
 - i) Seller and its employees and subcontractors shall to follow Buyer Safety Rules/Procedures when performing work on Buyer facilities.

- ii) Seller agrees to use its vehicle(s) on Buyer's premises at its own risk and that Buyer will not be responsible for damage to Seller's vehicle(s) as the result of normal operations, such as blasting, painting, road oiling, etc.
- iii) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Buyer's workplace, and any Seller or employee of Seller agrees that Buyer may test any Seller or Seller's employee on Buyer's premises for the presence of alcohol or controlled substance in his or her body. The manner and frequency of such tests for alcohol and controlled substances shall be solely within the discretion of Buyer and Seller agrees to pay Buyer for the out-of-pocket expense incurred for any test which reveals the presence of alcohol or the presence of a controlled substance in any quantity. Any Seller or Seller's employee whose test shows the presence of alcohol or the presence of a controlled substance in any quantity shall be barred from Buyer's premises. Buyer shall not be required to perform the screening or testing provided herein, and shall not be liable under any circumstances for not performing tests.
- iv) Seller, at its expense, shall keep and maintain equipment furnished by Buyer in good condition and upon the termination of the use of such equipment, return the same to Buyer in as good condition as when received, subject, however, to ordinary wear and tear. If possible and practical to do so, Seller shall examine, before using, all materials, equipment and supplies furnished by Buyer, and will report to Buyer any defects therein in time to allow Buyer to replace same without delaying operations.
- v) Seller guarantees that all tools and equipment will be furnished, and all work and labor will be performed in strict accordance with all applicable federal, state and local laws, rules, regulations, orders and ordinances. In the event Seller's equipment, or use thereof, does not comply with the Federal Occupational Safety and Health Act standards and regulations, Seller shall be solely responsible for any fines or penalties that may be imposed. Seller is responsible for loss or damage to Seller's equipment.
- vi) In the event Seller or its agents, representatives, employees, or subcontractors are involved in an accident on Buyer's premises, or if such accident involves Buyer's property, equipment, or personnel (including Buyer's employees, agents, and representatives), or the property, equipment or personnel of Seller or its subcontractors, or if such accident involves any third party in any manner whatsoever while Seller or its agents, representatives, employees, or subcontractors are performing any duties within the scope of this Contract, Seller shall immediately report such accident to Buyer's safety director. The reporting of any accident will not imply any admission of liability on the part of Buyer or Seller, their agents, representatives, employees, or subcontractors.
- vii) Seller shall conduct its operations and the work in a manner that will prevent any pollution or other damage to the environment and shall observe and obey any and all applicable international, national, state and local environmental laws, rules, regulations, and any other applicable rules and standards issued for the protection of the environment. Seller shall be fully responsible for any and all losses, liabilities, claims, demands, debts, damages, fines, penalties, causes of action, suits, expenses and costs of any nature whatsoever (collectively, "Losses") arising from or in any

way related to any actual or threatened pollution, spills, contamination, discharge or other environmental damage caused directly or indirectly by the activity of Seller or its employees and agents in, on or around Buyer's premises. Seller shall indemnify and hold harmless the Indemnified Parties from and against any and all Losses directly or indirectly arising out of such threatened or actual pollution, spills, contamination, discharge or other environmental damages caused by the activity of Seller or its employees or agents in, on or around Buyer's premises.

13.0 SURVIVAL OF RIGHTS

- a) The rights and obligations of the parties that by their nature survive any termination or completion of this Agreement and the Purchase Order, including but not limited to the indemnification obligations, Seller's warranty obligations and Buyer's rights and remedies and the Disputes provision, shall remain in full force and effect.

14.0 DISPUTES

- a) The parties agree that disputes arising under this Agreement and/or Purchase Order shall be settled by the parties under binding arbitration under the Construction Industry Rules of Arbitration of the American Arbitration Association. The parties agree that the AAA Construction Industry Rules are expressly incorporated into this Agreement and/or Purchase Order. Any and all arbitration proceedings and hearings shall be located in New Orleans, Louisiana. Louisiana Law shall govern this Contract. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.

15.0 AMENDMENTS REQUIRED BY PRIME CONTRACT

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

16.0 OPTION FOR INCREASED QUANTITY

- a) All purchases by Buyer from Seller after those associated with the initial vessel are considered Options. The exercise of any Option is a unilateral right of Buyer, and shall be via contract modification executed by Buyer, in accordance with the Schedule and Pricing agreed by Buyer and Seller at the time the Purchase Order for the initial vessel is issued.

17.0 WARRANTIES

All warranties of Seller, whether created expressly by law or in fact, are incorporated in any P/O by reference and shall include and are supplemented by the following express warranties:

- a) The goods shall comply with any and all specifications, drawing samples, or other descriptions furnished by Buyer;

- b) the goods shall be merchantable of good material and workmanship, free from defect, and suitable for their intended purpose;
- c) Seller agrees to repair or replace, at Seller's sole expense, (which Seller's expense shall include, but not be limited to, the expense of delivery and redelivery of the goods to Seller's repair facility, insurance, packaging/packing and handling, and as to goods which cannot reasonably be shipped, Seller's expenses relating to transportation, lodging and associated expenses of Seller's repair personnel to the site of the goods to be repaired, and all labor and material costs required to effect repair), any goods found to be defective as to material or workmanship, for a period of one (1) year from the date of delivery by Buyer of Buyer's product in which Buyer has placed or incorporated Seller's goods purchased under any Purchase Order; and, the repair(s) of goods which have been repaired under this warranty shall be themselves warranted from defects in material and workmanship for an additional one (1) year from the date that the repairs are accepted by Buyer, and any additional repairs to the goods required by a failure of previous repair(s) shall likewise be effected at Seller's sole expense;
- d) the goods shall have a shelf life of not less than eighty-five (85%) percent of their usable life, as measured from the date of the goods' manufacture to their expiration date, provided that in any event, the expiration date of the goods shall be not less than one (1) year from Buyer's receipt thereof; and
- e) except in the case of goods for which Buyer furnished detailed manufacturing drawings, the manufacture and sale by Seller of the goods, the use of the goods by Buyer, or disclosures by Seller to Buyer in any manner shall not infringe upon or violate the legal or equitable rights of any person, corporation, or partnership arising out of any license or franchise, or out of any patent, trademark, copyright, or other proprietary right now or hereinafter in effect.

All obligations of Seller under any P/O shall survive acceptance of payment by Buyer and shall include liability for any loss, consequential and incidental damages, and expenses resulting from the breach of any warranty or resulting from any other act or omission by Seller, its agents or employees, while in the performance thereof.

17.0 DOMESTIC SOURCING

- a) The Seller agrees to identify the country of origin of all articles, materials, and supplies provided to Buyer under the P/O.

18.0 COMBATING TRAFFICKING IN PERSONS

- a) This contract includes FAR 52.222-50. If this P/O is for supplies, other than commercially available off-the-shelf items, acquired outside of the U.S., or services performed outside of the U.S. and have an estimated value that exceeds \$500,000, by signing the P/O the Seller certifies: (i) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of FAR 52.222-50 and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and (ii) After having conducted due diligence, either – (A) To the best of the Seller's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or (B) If abuses relating to any of the

prohibited activities identified in paragraph (b) of FAR 52.222-50 have been found, the Seller has taken the appropriate and referral actions.

- b) The Seller agrees to make this certification to the Buyer annually during performance of the P/O.

19.0 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

- a) Certification. This contract contains FAR 52.203-11 and 52.203-12. By signing the P/O, Seller certifies to the best of its knowledge and belief that 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, an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
- b) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made any lobbying contact on behalf of the Seller with respect to this contract, the Seller shall complete and submit, with its offer to Buyer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The Seller need not report regularly employed officers or employees of the Seller to whom payments of reasonable compensation were made.

20.0 INCORPORATION OF CONTRACT AND FAR CLAUSES

- a) The Seller understands that Buyer has been awarded the contract by the U.S. Government to build the ASC vessels.
- b) Applicable U.S. Government Contract clauses are contained within these Terms and Conditions.
- c) The appearance of a U.S. Government or other federal agency Contract number on the face of a Purchase Order shall conclusively establish the applicability, as well as the incorporation into this Purchase Order, of any of the U.S. Government's or other federal agency's clauses referenced in the U.S. Government Contract.
- d) The Seller shall similarly incorporate the Contract in any further subcontract, purchase order, or agreement entered into by the Seller with its lower-tier subcontractors, vendors, or suppliers, if any.
- e) By signing this Purchase Order, Seller represents and warrants that Seller has received the U.S. Government Contract clauses identified in these Terms and Condition and is familiar, or will familiarize itself, with the U.S. Government Contract clauses.
- f) Federal Acquisition Regulation (FAR) clauses referenced and/or contained in the U.S. Government Contract are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Purchase Order. Seller understands that it shall be bound to the Buyer to the same extent that Buyer is bound to U.S. Government under the Contract.
- g) Some prime contract clauses and FAR clauses referenced in this contract set forth a period of time in which the U.S. Government requires a notification/response from Buyer. For purposes of this contract, Seller shall be given two-thirds (2/3) of the period of time specified by the prime contract clause or FAR clause to provide said information to Buyer.

Prime Contract Clauses Flow-downs applicable to all ASC Vendors, including Commercial products and services (as Defined in FAR 2.101) Vendors (Rev -).

CLAUSE	CLAUSE TITLE	DATE	SUBCONTRACTOR APPLICABILITY
52.202-1	Definitions	JUN 2020	All subcontracts, including commercial products and services.
52.203-13	Contractor Code of Business Ethics and Conduct	NOV 2021	All subcontracts, including commercial products and services, exceed \$7.5 million and have a period of performance of more than 120 days. All disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017	All subcontracts, including commercial products and services.
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	NOV 2025	All subcontracts, including commercial products and services, which exceed \$35,000, are not a subcontract for a commercially available off-the-shelf item.
52.211-15	Defense Priorities and Allocation Requirements	APR 2008	All subcontracts, including commercial products and services.
52.222-50	Combating Trafficking in Persons, with Alt I	NOV 2021	All subcontracts, including commercial products and services.
52.225-8	Duty Free Entry	OCT 2010	All subcontracts, including commercial products and services.
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	MAR 2023	All subcontracts with small business concerns.
52.240-91	Security Prohibitions and Exclusions	NOV 2025	All subcontracts, including commercial products and services.
52.244-6	Subcontracts for Commercial products and services	NOV 2025	All subcontracts, including commercial products and services.

CERTIFICATION REGARDING DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

Certification. This contract contains FAR 52.209-6. By signing the P/O, Seller certifies that it and/or any of its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

DATA RIGHTS

(a) *Definitions.* As used in this clause—

“Commercial product and commercial service” includes commercial components and commercial processes but does not include commercial computer software.

“Covered Government support contractor” means a contractor (other than a litigation support contractor) under a contract whose primary purpose is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor – (1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and (2) Receives access to technical data or computer software under a non-disclosure agreement with the party whose name appears in the legend. Engineering support contractors are exempt from the direct competitor rule; however, this exemption does not waive any organizational conflicts of interest.

“Form, fit, and function data” means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

“Technical data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

(b) *Applicability.* This clause governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(c) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Licensor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (c)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial products; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Licensor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Licensor acknowledges that—

- (i) Technical data covered by paragraph (c)(1) of this clause are authorized to be released or disclosed to covered Government support contractors;
 - (ii) The Licensor will be notified of such release or disclosure;
 - (iii) The Licensor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Licensor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Licensor (or party asserting restrictions) may waive in writing the requirement for an nondisclosure agreement; and
 - (iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the data. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.
- (d) Additional license rights.** The Licensor, its subcontractors, and suppliers are not required to provide the Government additional rights beyond the use, modification, reproduction, release, performance, display, or disclosure of technical data as described above. However, if the Government desires to obtain additional rights in technical data, the Licensor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Licensor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.
- (e) Release from liability.** The Licensor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.
- (f) Subcontractors or suppliers.**
- (1) The Licensor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. § 3771-3775, 10 U.S.C. § 3781-3786, and 15 U.S.C. § 638(j)(1)(B)(iii) and (v).
 - (2) Whenever any technical data related to commercial products or commercial services developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Licensor shall use this clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

LICENSE RIGHTS TO BUYER

Seller grants Buyer a limited, non-exclusive, royalty free license to use Seller Background IP solely to the extent necessary to perform its obligations under this Agreement and the Prime Contract. The foregoing license shall not include the right to use Seller Background IP to manufacture the Seller's equipment, including the accessories attached thereto, and controls. Each party shall retain sole and exclusive ownership of all intellectual property owned by such party as of the effective dates of this Agreement. Ownership of Foreground IP shall be at law, and Seller grants to Buyer the same license to Foreground IP as Background IP.

FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2024) (DHS-USCG DEVIATION 14-01 REVISION 1)

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at 10 U.S.C. 4701 and Homeland Security Acquisition Regulation (HSAR) 3.900 (DEVIATION) through 3.905 (DEVIATION).
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 10 U.S.C. 4701, as described in HSAR 3.900 (DEVIATION) through 3.905 (DEVIATION).
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

3052.249-90 CONTRACT TERMINATION (USCG) (MAR 2023)

(a) This contract is subject to Section 3523 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), 14 U.S.C. 1155, pertaining to contract terminations for the United States Coast Guard (USCG).

(b) Notification. As required by 14 U.S.C. 1155(b), before terminating a contract with a total value of more than \$1,000,000, the Commandant of the Coast Guard shall notify the contractor and the contractor shall be required to maintain all work product related to the contract until the earlier of---

(1) not less than 1 year after the date of the notification:

or

(2) the date the Commandant notifies the vendor that maintenance of such work product is no longer required.

(c) Work Product Defined. In this clause the term "work product"---

(1) means tangible and intangible items and information produced or possessed as a result of a contract referred to in subsection (b); and

(2) includes ---

(i) any completed end items;

(ii) any uncompleted end items; and

(iii) any property in the Contractor's possession in which the United States Government has an interest.

(d) Penalty. A Contractor that fails to maintain work product as required under subsection (b) is liable to the United States for a civil penalty of not more than \$25,000 for each day on which such work product is unavailable.

(e) The Contractor shall insert the substance of this clause in contracts and subcontracts including contracts for commercial items, with a total value of more than \$1,000,000.

FAR 52.252-2 Clauses Incorporated By Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: [Revolutionary FAR Overhaul | Acquisition.GOV](https://www.acquisition.gov/far-overhaul)
[\[www.acquisition.gov/far-overhaul\]](https://www.acquisition.gov/far-overhaul)

COMPLIANCE WITH EXPORT LAWS

Each Party represents that it will comply with all applicable export and import laws and regulations during performance of this Agreement, including but not limited to, the U.S. Arms Export Control Act, as amended (22 U.S.C. §§ 2751-2799), the International Traffic in Arms Regulations, as amended (22 C.F.R. Part 120 *et seq.*), the Export Administration Act, as amended, (50 U.S.C. §§ 2401-2420), the U.S. Export Administration Regulations, as amended (15 C.F.R. § 730 *et seq.*), and the *Controlled Goods Regulations* (Canada). The Parties shall not export, disclose, furnish or otherwise provide any defense article, technical data, technology, defense service, or technical assistance of the other Party to third party, without obtaining, in advance, (a) appropriate U.S. government export authorization (if applicable), and (b) written approval from the disclosing Party (i.e. the Party that first disclosed the information to the other Parties).



EXECUTION OF THE SUPPLIER AGREEMENT

TRANSMISSION OF ORIGINAL SIGNATURES AND EXECUTING MULTIPLE COUNTERPARTS

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. These Terms & Conditions may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.