



NAVFAC Caissons

Terms and Conditions

Bollinger Shipyards Lockport, L.L.C.

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NAVFAC CAISSON 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 Caissons program, awarded to Bollinger by the USG, under Contract Number N00085-22-C-0010.
- 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.

- b) Seller shall comply with all statutes, legal directives and regulations in its performance under this Contract.
- c) In the event that the goods do not conform with any legal requirement in addition to the requirements and Bollinger is penalized for such nonconformance, Seller shall indemnify Bollinger for all penalties, costs and expenses, including interest levied against Bollinger.

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 Bollinger 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, regulation or Government contract;
 - ii) Any special provisions of this P/O;
 - iii) these Terms & Conditions;
 - iv) statement of work;
 - v) specifications; and
 - vi) 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 Caissons 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, including the requirements of applicable FAR Clauses and the International Traffic in Arms Regulation the regardless of the presence of any Master Work Contract.
- e) Additional or differing terms or conditions proposed by Seller are objected to by Bollinger and have no effect unless expressly accepted in writing by Bollinger.

4.0 WARRANTIES

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

- a) 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:
 - i) Seller shall be responsible for all costs associated with promptly correcting, at the site of the equipment or vessel, valid warranty claims. The costs shall include but are not limited to:
 - 1) Repair, replacement, and associated freight;

- 2) Bollinger production, administrative, and engineering services;
 - 3) Correcting direct damage to equipment, the site, the compartment or contents resulting from the warranty defect;
 - 4) Correcting the work, materials, and equipment that are disturbed in fulfilling the warranty, including that which may have been warranted under another contract;
 - 5) All damages incurred by Bollinger as a result of Seller's failure to make prompt repairs.
- ii) If the Seller fails to proceed promptly in accordance with the warranty, Bollinger may have such work performed at the expense of Seller.
 - iii) A valid warranty claim is defined as: the correction of any defect in workmanship or material identified during the warranty period. A valid warranty claim also mandates correction of defects in workmanship and material after the warranty expires that are latent, caused by fraud, or caused by gross mistake such as amounting to fraud.
 - iv) The warranty period begins at Bollinger's acceptance of the supplies and services furnished under this contract and ends 365 days after the U.S Government's acceptance of the supplies and services furnished under this contract. The supplies and services subject to correction and furnished in replacement shall be subject to the conditions of this Warranty clause to the same extent as supplies and services initially delivered. The warranty shall be equal in duration to that set forth above and shall run from the date of delivery of the corrected or replaced supplies or services.
 - v) In addition to the warranty period of section iv), the Seller shall extend to the Government the full coverage of any standard commercial warranty normally offered in a similar commercial sale, provided that such warranty is available at no additional cost to the Government. The Seller shall provide a copy of the standard commercial warranty with the item. The standard commercial warranty period shall begin upon the final acceptance by the Government of the applicable material or software. Acceptance of the standard commercial warranty does not waive the Government's rights under the "Inspection" clause, nor does it limit the Government's rights with regard to other terms and conditions of the contract. In the event of a conflict, the terms and conditions of the contract shall take precedence over the standard commercial warranty.
 - vi) Seller warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after Buyer's delivery of the data to the Government.
 - vii) 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.
 - viii) 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.

- ix) The rights and remedies of Bollinger provided in this clause are in addition to and do not limit any rights otherwise afforded to Bollinger under this contract.

5.0 INSURANCE

- a) 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.
 - vii) 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.
 - viii) 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.
 - ix) 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.
 - x) 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.

6.0 STANDARDIZATION

- a) The U.S. Government has expressed a desire to procure multiple vessels under the Caissons program. It is extremely important to the U.S. Government to maintain standardization within the Caissons.
- b) Equipment supplied under the Caissons program for follow-on Caissons shall be identical to that supplied for the first Caisson, unless otherwise approved in advance in writing by Bollinger.
- c) Any cost incurred by Bollinger 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.

7.0 WEIGHT GUARANTEE AND PENALTY

- a) In the event that the weight of the equipment/material furnished under the Contract exceeds the weight agreed upon Seller shall be liable for liquidated damages at the rate of \$100.00 per pound by which the actual total weight of the order exceeds the agreed upon total weight of the order. The equipment/material weight shall be verified by a load cell calibrated to the requirements of the National Institute of Standards and Technology (NIST). In addition, Bollinger retains the right to reject equipment/material that is more than the weight agreed upon.

8.0 ASSIGNMENT

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

9.0 COMMUNICATION WITH BOLLINGER CUSTOMER

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

10.0 CONTRACT DIRECTION

- a) Bollinger 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 Bollinger Procurement Representative.

11.0 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.

12.0 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 Bollinger.
- 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.

13.0 ACCESS TO SELLER'S FACILITY

- a) Officers, employees, and associates of Bollinger with the U.S. Government and their subcontractors, shall, as authorized by Bollinger, 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 Bollinger or contractors of the U.S. Government that have been identified and authorized by Bollinger 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.

14.0 ACCESS TO BOLLINGER'S FACILITY

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

- i) Seller and its employees and subcontractors shall to follow Bollinger Safety Rules/Procedures when performing work on Bollinger facilities.
- ii) Seller agrees to use its vehicle(s) on Bollinger's premises at its own risk and that Bollinger 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 Bollinger's workplace, and any Seller or employee of Seller agrees that Bollinger may test any Seller or Seller's employee on Bollinger'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 Bollinger and Seller agrees to pay Bollinger 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 Bollinger's premises. Bollinger 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 Bollinger in good condition and upon the termination of the use of such equipment, return the same to Bollinger 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 Bollinger, and will report to Bollinger any defects therein in time to allow Bollinger 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 Bollinger's premises, or if such accident involves Bollinger's property, equipment, or personnel (including Bollinger'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 Bollinger's safety director. The reporting of any accident will not imply any admission of liability on the part of Bollinger 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 Bollinger'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 Bollinger's premises.

15.0 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 Bollinger's rights and remedies and the Disputes provision, shall remain in full force and effect.

16.0 DISPUTES

- a) Seller expressly represents that the Contract Disputes Act (CDA) is incorporated into this Agreement and Purchase Order and to be bound by the procedures set forth therein regarding any and all disputes arising out of or related to this Agreement and/or Purchase Order. Seller further agrees to first make and assert any and all claims and/or requests for equitable adjustment arising out of, related to, or connected with the Contract, Agreement, or Purchase Order in the manner and within the time limits provided in the Contract for Seller to pursue like claims against USG and in sufficient time for Seller to make such claims against the USG in accordance with the Contract. Seller agrees to permit Seller to prosecute a claim or equitable adjustment in the name of Seller for the use and benefit of Seller in the manner provided in the Prime Contract for like claims pursued by Bollinger against the USG. However, nothing contained in this Agreement shall cancel rights, remedies, or benefits in favor of Seller that do not exist pursuant to the terms of this Agreement.
 - i) Pending final disposition of any dispute under this Agreement or Purchase Order, Seller agrees to proceed diligently with the performance of this Agreement or Purchase Order and in accordance with the decision of Bollinger or USG.
 - ii) Any decision made by the USG Contracting Officer in Bollinger's Prime Contract, if binding upon Bollinger, shall bind Bollinger and Seller. In no event shall Bollinger be required to appeal on behalf of or permit Seller to appeal in Bollinger's name if Bollinger considers Seller's position to be groundless in fact, or in law or frivolous. Any decision on such appeal shall be binding upon Seller.
 - iii) If Bollinger permits Seller to appeal in Bollinger's name, Seller will be permitted, to the extent permitted by the Government, to participate in any such appeal for the purpose of protecting its rights, and Bollinger will not enter into a settlement agreement with the Government or take any other action which would prejudice

- Seller's rights under this Clause without Seller's consent. Fees and costs and expenses incurred by Bollinger in prosecuting any such appeal initiated by Bollinger at Seller's request shall be paid by Seller and shall not be reimbursable or otherwise compensable as a cost under this Purchase Order or Agreement. The Seller agrees to comply with the same claim certification requirements and support data requirements imposed upon the Bollinger under its Prime Contract by reason of the Contract Disputes Act of 1978 (41 U.S.C. §601-613), FAR 52.233-1. Specifically, Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, agree to provide with its claim submission, in accordance with the CDA, the following certification language: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the [submitting party] believes the Government are liable; and that I am duly authorized to certify the claim on behalf of the [submitting party]."
- iv) Seller agrees to accept in full satisfaction and discharge of any and all of its claims brought under the CDA the amounts which Bollinger recovers from the Government on behalf of the Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, pursuant to the terms of this Agreement and Purchase Order, if any. If no such recovery is obtained from the Government, Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, agree to accept Bollinger's good faith efforts, cooperation, and compliance with its obligations provided herein to obtain such recovery in full satisfaction and discharge of Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, asserted claims. Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, shall not commence or take any legal action related to the Bollinger's prosecution of Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, claims. Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, agree that each will not seek to recover from Bollinger any amount that Bollinger does not recover from the Government for each of Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers claims, respectively.
 - v) Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, agree that each will prepare its claim(s) in accordance with FAR 52.233-1 as well as provide a cost or pricing data certification pursuant to the FAR.
 - vi) Bollinger and Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, shall confer with regard to discovery, the proposed presentation of evidence and testimony, and shall give due regard to the needs of the other party's proof. If the presentation of the proof or part of the proof of one party's claim or request for contract adjustment directly interferes with the proof of the other party's claim, Bollinger shall confer with Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers. As the named party, however, Bollinger has the right to make the final decision as to what action to take, if any.
 - vii) Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, may retain their own attorneys and experts to prepare and assist in presenting the Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, evidence in support of their claims in the name of Bollinger if allowed by Bollinger.

viii) Bollinger's counsel will be designated as the lead attorney for all claims filed with the Government and jointly negotiated. With regard to any proceeding before the CBCA or COFC, or any resultant appeal, Bollinger's counsel shall be designated as "Counsel of Record."

b) Arbitration Clause

- i) As a condition precedent to arbitration, Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, must first submit any and all claims and disputes arising out of, related to, or connected with the Agreement and/or Purchase Order through the CDA procedure and consistent with Article 15(a) above before filing any arbitration proceeding or demand. Only after Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers, exhausts any and all remedies and procedures addressed in Article 15(a), shall Seller, and Seller on behalf of its sub-tier subcontractors, suppliers and Sellers be permitted to submit any and all unresolved disputes arising under this Agreement and/or Purchase Order that cannot be settled by the parties under the Dispute Resolution Procedures in Article 15(a) to 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.
- ii) Seller shall support Bollinger as requested in the resolution of any Disputes that arise between Bollinger and the U.S. Government. Bollinger shall support Seller's requests for equitable adjustment to price and schedule for Changes initiated by the U.S. Government.

17.0 AMENDMENTS REQUIRED BY PRIME CONTRACT

- a) Seller agrees that upon the request of Bollinger it will negotiate in good faith with Bollinger relative to amendments to this contract to incorporate additional provisions herein or to change provisions hereof, as Bollinger 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.

18.0 OPTION FOR INCREASED QUANTITY

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

19.0 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

- a) Seller agrees that it has reviewed DFARS 252.227-7022, 252.227-7023, and 252.227-7033.

20.0 DPAS RATING: DO-C2

- a) This contract is a rated order under DPAS (15 CFR 700), with a rating of DO-C2. By signing the P/O Seller agrees to the following: This is a rated order certified for national defense use, and Seller is required to follow all the provisions of the Defense Priorities and Allocation System regulation (15 CFR 700).

21.0 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.

22.0 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.

23.0 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.

24.0 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 Caissons.
- 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) 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.
- e) 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.
- f) By signing this Purchase Order, Seller represents and warrants that Seller has received the U.S. Government Contract and is familiar, or will familiarize itself, with the U.S. Government Contract.
- g) The 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.
- h) 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 Bollinger. 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 Bollinger.

Prime Contract Clauses Flow-downs applicable to all Caisson Vendors, including Commercial Item (as Defined in FAR 2.101) Vendors.

CLAUSE	CLAUSE TITLE	DATE	SUBCONTRACTOR APPLICABILITY
52.242-15	Stop-Work Order	AUG 1989	All subcontracts, including commercial items.
52.202-1	Definitions	JUN 2020	All subcontracts, including commercial items.
52.203-13	Contractor Code of Business Ethics and Conduct	JUN 2020	All subcontracts, including commercial items, which exceed \$6 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.
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010	All subcontracts, including commercial items.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017	All subcontracts, including commercial items.
52.204-2	Security Requirements	AUG 1996	All subcontracts, including commercial items, which involve access to classified information. Section (c) of the clause does not flow down.
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011	All subcontracts, including commercial items, in which the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	JUN 2020	All first-tier subcontracts, including commercial items, which exceed \$30,000. The clause does not flow down to lower tier subcontracts.
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	JUL 2018	All subcontracts, including subcontracts for the acquisition of commercial items.
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	AUG 2020	All subcontracts, including subcontracts for the acquisition of commercial items. Section (b)(2) of the clause does not flow down.

52.215-2	Audit and Records-Negotiation	JUN 2020	All subcontracts, including commercial items, which exceed \$250,000 and (1) are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable; or (2) for which certified cost and pricing data are required; or (3) that require the subcontractor to furnish reports [cost, funding, or performance reports] as discussed in Section (e) of the clause.
52.215-13 (Dev)	Subcontractor certified Cost or Pricing Data – Modifications (Deviation 2018-O0015)	MAY 2018	All subcontracts, including commercial items, that exceed \$2 million. (CI)
52.215-15	Pension Adjustments and Asset Reversions	OCT 2010	Subcontracts, including commercial items, for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to FAR part 31.
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	JUL 2005	Subcontracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to FAR part 31.
52.215-23	Limitations on Pass-Through Charges	JUN 2020	All cost-reimbursement and fixed price subcontracts that exceed \$2 million except those identified in FAR 15.408(n)(2)(i)(B)(2). Note that FAR 15.408(n)(2)(i)(B)(2) excepts commercial products and commercial services acquired by fixed-price subcontract.
52.219-8	Utilization of Small Business Concerns.	OCT 2018	All subcontracts, including commercial items, that include further subcontracting opportunities.
52.219-9	Small Business Subcontracting Plan	NOV 2021	All subcontracts, including commercial items (except with small business concerns) in excess of \$750,000.
52.222-21	Prohibition of Segregated Facilities	APR 2015	All subcontracts, including commercial items, subject to Equal Opportunity (FAR 52.222-6) clause of this contract.
52.222-26	Equal Opportunity	SEP 2016	All subcontracts, including commercial items, not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended.
52.222-35	Equal Opportunity for Veterans	JUN 2020	All subcontracts, including commercial items, of \$150,000 or greater, unless exempted by the rules, regulations, or orders of the Secretary of Labor.
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020	All subcontracts, including commercial items, of \$15,000 or greater, unless exempted by the rules, regulations, or orders of the Secretary of Labor.
52.222-37	Employment Reports on Veterans	JUN 2020	All subcontracts, including commercial items, of \$150,000 or greater, unless exempted by the rules, regulations, or orders of the Secretary of Labor.

52.222-40	Notification of Employee Rights Under the National Labor Relations Act.	DEC 2010	All subcontracts, including commercial items, which exceed \$10,000, unless exempted by the rules, regulations, or orders of the Secretary of Labor.
52.222-50	Combating Trafficking in Persons.	JAN 2019	All subcontracts, including commercial items.
52.222-54	Employment Eligibility Verification.	OCT 2015	All subcontracts which exceed \$3,500, that include work in the U.S., and is for commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for the COTS item) or construction.
52.222-55	Minimum Wages for Contractor Workers Under Executive Order 13658	DEC 2015	Subcontracts, including commercial items, that are subject to the Service Contract Labor Standards or the Wage Rate Requirements (Construction) statute and are to be performed in whole or in part in the United States.
52.222-62	Paid Sick Leave Under Executive Order 13706	JAN 2017	Subcontracts, including commercial items, that are subject to the Service Contract Labor Standards or the Wage Rate Requirements (Construction) statute and are to be performed in whole or in part in the United States. (CI)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors.	DEC 2013	All subcontracts, including commercial items, with small business concerns.
52.244-6	Subcontracts for Commercial Items	JUL 2021	All subcontracts, including commercial items.
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information	OCT 2016	Subcontracts for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items.
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019	Subcontracts for operationally critical support or for which subcontract performance will involve covered defense information, including subcontracts for commercial items.
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	MAY 2016	All subcontracts, including subcontracts for commercial items.
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	DEC 2019	All subcontracts, including commercial items.
252.223-7008	Prohibition on Hexavalent Chromium	JUN 2013	All subcontracts, including commercial items.
252.225-7048	Export-Controlled Items.	JUN 2013	All subcontracts, including commercial items.



252.227-7022	Government Rights (Unlimited)	MAR 1979	All subcontracts, including commercial items, where drawings, designs, specifications, notes, and other works are developed in the performance of the contract.
252.227-7023	Drawings and Other Data to Become Property of Government	MAR 1979	All subcontracts, including commercial items, where drawings, designs, specifications, notes, and other works are developed in the performance of the contract.
252.227-7033	Rights in Shop Drawings	APR 1966	All subcontracts, including commercial items.
252.244-7000	Subcontracts for Commercial Items	JUN 2013	All subcontracts, including subcontracts for the acquisition of commercial items.
252.247-7023	Transportation of Supplies by Sea	FEB 2019	All subcontracts, including commercial items.

Additional Prime Contract Clauses Flow-downs applicable to Caisson Vendors (Exclusive of Commercial Items)

CLAUSE	CLAUSE TITLE	DATE	SUBCONTRACTOR APPLICABILITY
52.203-6	Restrictions on Subcontractor Sales to the Government.	JUN 2020	All subcontracts which exceed \$250,000.
52.203-7	Anti-Kickback Procedures.	JUN 2020	All subcontracts which exceed \$150,000. Section (c)(1) of clause does not flow down.
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 2020	All subcontracts which exceed \$150,000.
52.203-16	Preventing Personal Conflicts of Interest	JUN 2020	All subcontracts which exceed \$250,000 and in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions.
52.222-4	Contract Work Hours and Safety Standards -Overtime Compensation	MAY 2018	All subcontracts that may require or involve the employment of laborers and mechanics.
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving.	JUN 2020	All subcontracts which exceed the micro-purchase threshold (FAR 2.101)
52.225-13	Restrictions on Certain Foreign Purchases.	FEB 2021	All subcontracts.
52.227-1	Authorization and Consent.	JUN 2020	All subcontracts which exceed \$250,000.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.	JUN 2020	All subcontracts which exceed \$250,000.
52.236-13	Accident Prevention	NOV 1991	All subcontracts.
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies	DEC 2008	All first-tier subcontracts which exceed \$250,000.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights.	SEP 2013	All subcontracts.
252.203-7004	Display of Hotline Posters	AUG 2019	Subcontracts which exceed \$6 million.
252.204-7000	Disclosure of Information	OCT 2016	All subcontracts.
252.225-7016	Restriction on the Acquisition of Ball and Roller Bearings	JUN 2011	All subcontracts, except those that do not contain ball or roller bearings.