

BREEZE-EASTERN LLC PURCHASE ORDER TERMS AND CONDITIONS

Contents

<u>Section</u>	<u>Page</u>
1. FORMATION OF CONTRACT AND MODIFICATIONS	2
2. DEFINITIONS.....	2
3. INSPECTION AND ACCEPTANCE	2
4. QUALITY ASSURANCE.....	3
5. WARRANTY	3
6. DELIVERY, PACKING AND SHIPMENT	5
7. CHANGES	6
8. INVOICING, TAXES AND PAYMENT	6
9. STOP WORK	7
10. TERMINATION FOR CONVENIENCE	8
11. TERMINATION FOR DEFAULT	8
12. B-E PROPERTY	8
13. SUBCONTRACTING AND ASSIGNMENT	8
14. TITLE AND RISK OF LOSS.....	9
15. SELLER'S NONDISCLOSURE	9
16. B-E'S USE OF DATA AND INFORMATION	9
17. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY	10
18. NOTICE OF LABOR DISPUTES	10
19. DISPUTES (GENERAL)	10
20. RIGHTS AND REMEDIES	11
21. WAIVER AND SEVERABILITY	11
22. ORDER OR PRECEDENCE	11
23. COMPLIANCE WITH STATUTES AND REGULATIONS	11
24. GRATUITIES.....	12
25. AUDIT AND INSPECTION OF RECORDS	12
26. B-E FURNISHED TOOLS, MATERIALS AND DATA	12
27. OFFSET AND COPRODUCTION	13
28. PRICE WARRANTY.....	13
29. NEWS RELEASE AND PUBLIC ANNOUNCEMENTS	13
30. FARS, DFARS, AND NASA PROVISIONS (FIRM FIXED PRICE CONTRACTS)	14
31. CERTIFICATIONS	15
32. ADDITIONAL CLAUSES	15
33. TRUTH IN NEGOTIATIONS.....	15
34. DISPUTES – GOVERNMENT CONTRACTS	16
35. FARS, DFARS, AND NASA PROVISIONS (GENERAL GOVERNMENT CONTRACTS)	17
37. EQUAL OPPORTUNITY FOR VETERANS AND THE DISABLED	19
38. ITAR COMPLIANCE	23

Breeze – Eastern LLC

Purchase Order Terms & Conditions

1. FORMATION OF CONTRACT AND MODIFICATIONS

This Contract is Breeze-Eastern (B-E) offer to Seller and acceptance by Seller is expressly limited to the terms of this offer. Seller's acceptance of B-E's offer may be by commencement of performance hereunder or by timely written acknowledgment of this Contract. However, if Seller's acceptance is by commencement of performance, B-E reserves the right to treat its offer as having lapsed before acceptance unless B-E is notified of Seller's acceptance within a reasonable time. Any different or additional terms of Seller are hereby objected to and rejected by B-E. This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of this Contract. Upon Seller's acceptance, this Contract shall be the complete and exclusive statement of the terms of the resulting Contract, which Contract shall not be modified by any course of performance. No modification of this Contract shall be effective or become binding upon B-E, unless signed by an authorized B-E Purchasing Representative.

2. DEFINITIONS

The following definitions apply to this Contract unless otherwise specifically stated:

- (A) "B-E" or "Buyer" - the legal entity issuing this Contract: Breeze-Eastern, its successors, assigns or purchasers of a substantial portion of its business or assets.
- (B) "Purchasing Representative" - Buyer's authorized representative identified elsewhere in this Contract and assigned responsibility for this procurement activity. The term "Purchasing Representative" also includes any B-E Subcontract Administrator ("SCA").
- (C) "Seller" - the legal entity which contracts with the Buyer, including any occasional reference to "Offeror", "Supplier", "Vendor" or "Subcontractor" (first-tier only).
- (D) "This Contract" - this contractual instrument, including any changes or modifications to it.
- (E) "Goods" - all items, including raw materials, components, services, intermediate assemblies, end products and data, required to be delivered or performed under this Contract.
- (F) "Government" - the Government of the United States.
- (G) "Prime Contract" - the Government contract, higher-tier subcontract issued to B-E under a Government contract or commercial contract under which this Contract is issued.
- (H) "Contracting Officer" - the designed contracting representative for any applicable Government prime contract, including that Contracting Officer's authorized representative.
- (I) "FAR" - the Federal Acquisition Regulation.
- (J) "DFARS" - the Department of Defense FAR Supplement.

3. INSPECTION AND ACCEPTANCE

- (A) All goods to be delivered and services to be performed hereunder shall be subject to inspection, surveillance and test at all times and places, including the period and place of manufacture or performance, by B-E and its' customers, and also by Government representatives if this Contract is placed pursuant to a Government prime contract or subcontract.
- (B) Seller and Seller's subcontractors shall provide and maintain an inspection system acceptable to B-E and, where applicable, the Government. B-E and, where applicable, Government inspectors shall have access to all areas on the premises of the Seller or Seller's subcontractors in which work on this Contract is being performed. Seller and Seller's subcontractors shall provide all reasonable facilities for the safety and convenience of the inspectors, and Seller agrees to furnish to the inspectors all information and data that may be reasonably required to perform their inspection. All goods to be delivered hereunder shall be subject to final inspection, test and acceptance by B-E at destination, notwithstanding any payment or inspection at source. B-E shall

accept or give notice of rejection of goods delivered within a reasonable time after receipt of such goods. No inspection of goods by B-E prior to acceptance shall release Seller of its responsibility for any nonconformity. Acceptance by B-E shall not waive any rights that B-E might otherwise have at law or by express reservation in this Contract with respect to any nonconformity.

(C) Any tender of goods which is nonconforming shall be deemed to substantially impair the value of this Contract as a whole to B-E. In the event of a nonconforming tender, B-E shall be entitled to all remedies as provided by law, and in addition thereto, shall have the right to do any or all of the following:

- (1) hold nonconforming goods for a reasonable period pending a determination to accept or reject any or all of such goods;
- (2) return nonconforming goods to Seller for replacement or correction as B-E may elect;
- (3) accept nonconforming goods subject to an equitable Contract price reduction;
- (4) repair, replace or correct nonconforming goods and charge to Seller the cost occasioned to B-E thereby;
- (5) require Seller to correct nonconforming services at no increase in the price of this Contract;
- (6) recover by offset or otherwise any and all expenses, costs, price reductions and/or damages paid, incurred or suffered by B-E as a result or consequence of such holding, return, repair, replacement, correction, reduction or rejection of nonconforming goods and services. The value of the nonconforming goods shall be calculated by finding the product of the total hours expended by the B-E for disposition and/or correcting the nonconformance and the Seller's hourly burden rate; and/or
- (7) terminate this Contract as provided in Article 11. "Termination for Default".

4. QUALITY ASSURANCE

Seller shall provide and maintain a quality management system acceptable to B-E and, if required elsewhere hereunder, to the Government, for the goods and services purchased under this Contract. Seller agrees to permit B-E to review its procedures, practices, processes, and related documents to determine such acceptability. This systems' acceptability requirement shall remain applicable to Seller in addition to any special Quality Assurance provisions which may be incorporated elsewhere in this Contract.

Buyer will also monitor and review Seller's performance (i.e. on-time delivery, quality, etc.) and may request corrective action/ improvement plans as necessary.

5. WARRANTY

A. Coverage:

Seller warrants to Buyer that all Goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regards to Goods designed by Seller, free from defects in design; (v) in compliance with all applicable specifications, drawings, and performance requirements; (vi) fit for the purpose intended; and (vii) free from liens or encumbrances on title.

Delivery, inspection, test, acceptance or use of, or payment for the Goods furnished hereunder shall not affect Seller's obligation under this warranty and such warranties, and all other warranties, expressed or implied, shall survive delivery, inspection, test acceptance, payment and use. Seller agrees to correct defects in, or replace any Goods not conforming to the foregoing warranty promptly.

Seller agrees to immediately notify B-E upon becoming aware of a potential problem with product previously delivered to B-E. Such notification shall include a recommended course of action.

B. Period:

Seller warrants all goods or services provided under this Contract in accordance with the above conditions for a period of 12 months. The period of warranty shall begin at time of final acceptance

by B-E's end user. Exception to this warranty period is made for defects in workmanship which Seller warrants for the life of the Goods hereunder.

C. Notice:

B-E shall provide written notice of breach to Seller within a reasonable time following B-E's discovery of nonconformance.

D. Rights & Remedies:

Seller shall provide at Seller's expense, prompt corrections to or replacement of any goods or performance of any services failing to meet Seller's warranty herein including, but not limited to, all shipping and transportation costs. This remedy shall be at the election and direction of B-E. Goods or services corrected or replaced by Seller shall be subject to all of the conditions and provisions of this Contract in the manner and extent as goods or services originally furnished hereunder.

In the event that B-E decides that the repair or replacement of the nonconforming goods or the re-performance of nonconforming services are not required, B-E may offset, against any Seller's open Contract, the expenses accrued which result from the nonconformance.

The rights and remedies provided by this clause are in addition to any other rights or remedies that B-E may have at law or in equity.

E. Exclusions:

The provisions of this warranty will not apply to any warranted goods or services if failure or other nonconformance has been caused by:

1. Improper installation or maintenance.
2. Operation contrary to the Technical Manuals or other written instructions (approved by B-E or its customers) in such a way as to induce failure.
3. Repair or alteration by B-E or its customers in such a way as to induce a failure.
4. Misuse, neglect or accident.
5. Combat damage.
6. Operations outside the specific installation and operating limits specified in the Prime Item Development Specification (PIDS) in such a way as to induce a failure.
7. Foreign object damage.
8. Installation or operation in other than its intended use.
9. Failure caused by acts of God, subversion, riots, vandalism, or sabotage, or fire or explosion induced by or originating from sources external to the warranted item and not otherwise defined herein as resultant damage.
10. Damage attributable to improper packaging, crating, handling or storage by B-E or the Government, to the extent of said damage.

F. Limitation and Transfer or Rights:

B-E's warranty rights hereunder are in addition to, but shall not be altered by or limited to any standard warranties offered by the Seller. All warranties of Seller, including its service warranties or guarantees, if any, shall run to the benefit of B-E and its customer(s) as determined by the B-E Purchasing Representative.

G. Waiver:

Neither B-E's approval of Seller's designs or specifications nor B-E's acceptance of goods or services furnished by Seller shall relieve Seller of its obligations under this warranty. B-E's failure to enforce this warranty shall not prohibit or limit its enforcement on any future occasion.

H. Acknowledgements

Seller acknowledges that its products are being sold for use in rotor-wing aircraft. Seller assumes all risks in and responsibility for the manufacture, test, fabrication, and design in strict accordance with all specifications and drawings. With regard to software, software shall be delivered in a media, language, format and code that are compatible with Buyer's requirements.

I. Reliance

Seller warrants and acknowledges that Buyer has relied on and is entitled to rely on the Seller, as an expert fully competent in all phases of the work under the Purchase Order. Approval and / or review of any documents or data by Buyer in no manner whatsoever limits or reduces Seller's obligations to comply with the requirements of this Order, including without limitation compliance with the Specifications and Drawings.

6. DELIVERY, PACKING AND SHIPMENT

- A. Seller shall strictly adhere to the delivery and completion schedules specified in this Contract, and agrees that time is of the essence in the delivery of all goods hereunder. If, at any time, Seller believes it may be unable to comply with the required delivery or completion schedules, Seller shall immediately notify the B-E Purchasing Representative of any significant change in delivery status. In the event of such notice or of an actual failure by Seller to comply with the delivery or completion schedule, B-E may, in addition to all other remedies, require Seller, at Seller's expense, to ship goods via air freight or other expedited routing to avoid or minimize delays.
- B. B-E may, at its option, either retain (and store at Seller's expense) any goods received in excess of fifteen (15) calendar days in advance of the Contract delivery schedule(s) or return them to Seller at Seller's risk and expense; and if retained, time for payment and discount shall be calculated on the basis of schedule delivery dates. Overshipment allowances, if authorized, will be applied to the total quantity required by this Contract. Seller shall place all orders for and schedule deliveries of materials, parts and services necessary for performance under this Contract at such times as will enable Seller to meet, but not unreasonably anticipate the schedule of deliveries as set forth herein. In the event of termination of or changes to this Contract, B-E shall not be liable for any charges or costs arising out of commitments by Seller for the acquisition of said materials, parts or services, or out of work performed hereunder, in advance of time necessary to meet the delivery schedules hereunder, unless B-E has given its prior written consent to such advance commitments or work.
- C. Seller shall ensure that each container and accompanying packing lists, shipping notices, tags and documentation will show the number of this Contract. No charge shall be made by Seller for packaging, delivery or similar costs unless expressly authorized by this Contract. All deliverable goods shall be suitably prepared for shipment to ensure safe delivery, secure the lowest transportation and insurance rates and to meet carrier requirements. If required by this Contract, Seller shall provide insurance coverage, adequate to protect B-E's interests.
- D. Commercial packaging is normally acceptable for shipment to B-E. Seller is responsible for selecting packaging methods and materials, except Styrofoam and similar packaging materials, which provide adequate protection at minimum cost. Packaging methods and materials selected should consider, as a minimum, fragility, part composition, surface finish, size, weight and transportation mode. Packaging specified or referenced in this contract must be adhered to unless written deviation is authorized by B-E. Nonconforming packaging is subject to rejection or repackaging at Seller's expense. Questions concerning these packaging instructions are to be directed to the Buyer. Any change in price, terms or conditions must be approved by the undersigned B-E Buyer prior to implementation.

Each Contract item must be packaged and identified separately. If the part number consists of more than one component, then each component shall be packaged in a single container. Markings on primary packaging must include the part number, nomenclature and quantity. If applicable, include serial number, lot number and cure date. DO NOT combine items from different Contracts in the same shipping container.

All containers are subject to material inspection and should provide a reclosable feature. Loose fill packaging material, e.g. plastic peanuts is prohibited unless contained in polyethylene bag or similar method.

Two or more shipping containers and/or a total weight exceeding 150 pounds must be combined into a unitary load. The limit size of unitary loads in 50" overall height, 42" x 48" pallet (double deck construction) and a maximum 4" overhang on any side. Unitary loads must be properly stacked and bound (i.e. sufficient stacking pattern) and bound by stretch wrap. Containers over 150 pounds and/or 60" and up foot print, must integrate a 4 way entry skid permitting the use of standard material handling equipment.

Seller must provide legible packing slips, located in a conspicuous and easily accessible place on the inside of the shipping containers, unitary or pallet loads. All associated paperwork (i.e., certification, test reports, etc.) must be located with packing slips.

In addition, one copy of the packing slip must be in a conspicuous and easily accessible place on the outside of the shipping container or unitary load. Each shipping container shall be identified with the address, Contract number, item number(s) and part number.

- E. Except as specifically authorized by this Contract, B-E shall not be responsible for payment of goods delivered by Seller which are in excess of the total quantity ordered. Upon receipt of any excess quantity, the B-E Buyer will notify Seller of the over shipment and allow 48 hours for Seller's determination of whether Seller will:
 - 1. Pick up the excess materials at B-E;
 - 2. Authorize packing and return shipment at Seller's expense (if Seller elects to have the material returned, B-E's minimum charges for repackaging and shipping will be \$250.00; or
 - 3. Permit B-E to retain such goods at no cost to B-E.

7. CHANGES

- A. B-E may, at any time, by a written Change Order signed by the authorized Purchasing Representative and without notice to sureties, make changes within the general scope of this contract, which affect the:
 - 1. drawing, design or specifications;
 - 2. method of shipment or packing;
 - 3. place of inspection, delivery or acceptance;
 - 4. quantities and delivery schedules;
 - 5. description of time or place of performance of services; and
 - 6. B-E or Government-furnished facilities; equipment or material.
- B. If any such change causes an increase or decrease in the cost or the time required for the performance of this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule or both, and this Contract shall be modified in writing accordingly. Any claim by the seller for adjustment under this provision must be asserted in writing to B-E's Purchasing Representative not later than twenty (20) calendar days after the date of receipt by Seller of the written change authorization or within such extension as B-E may grant in writing. B-E may, in its sole discretion, consider any claim received from Seller regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information.
- C. Pending any such adjustments, Seller will diligently proceed with the Contract as modified. If the cost of property made excess or obsolete as a result of a change is included in Seller's claim for adjustment, B-E shall have the right to direct the manner of disposition of such property. B-E shall have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claims.

8. INVOICING, TAXES AND PAYMENT

- A. For each shipment of goods or complete items of services, Seller shall submit an original invoice marked "Original" and one copy marked "Copy" to B-E's Accounts Payable Department at the address specified on the face of this Contract. Seller's invoices will be returned for correction or offset by B-E's debit memorandum for any adjustments due to shortages, late deliveries, rejections

or other failure to comply with the requirements of this order, before payment is made by B-E. This Contract number and appropriate item number must appear on all shipping documents, invoices, quality certifications and packing sheets.

- B. Unless prohibited by law or otherwise expressly agreed by B-E, Seller shall pay and has included in the price of this Contract, any federal, state or local sales taxes, transportation, use or other taxes (except for income taxes) required to be imposed on the goods and services ordered hereunder by reason of their manufacture, sale or delivery. Materials, supplies and services designated for incorporation in the manufacture and production, or as a component part of any item to be manufactured or produced for the U.S. Government, shall not be subject to any federal, state or local taxes from which said materials, supplies and services are exempt. To the extent that any form of tax exemption is applicable to this Contract, Seller hereby agrees to recognize and comply with all exemption certificates presented by B-E.
- C. In the event B-E expressly agrees to accept invoices from Seller which contain any federal, state or local taxes, such taxes shall be separately itemized in Seller's invoices and supported by documentation satisfactory to B-E.
- D. In the event B-E expressly agrees to accept invoices from Seller which contain any freight charges, such freight charges shall be separately itemized in Seller's invoices and supported by documentation satisfactory to B-E.
- E. Determination of payment due dates shall be in accordance with the terms of this Contract and will be based on the latest of:
 - 1. the date the goods are received or services are complete;
 - 2. the date goods are scheduled to be received or services are scheduled for completion under the Contract, or
 - 3. the date an accurate invoice is received by B-E. Payment by B-E will be deemed to have been made when deposited in the mail.
 - 4. Payment terms are Net 45 days after receipt of a correct and proper invoice.

9. STOP WORK

- A. B-E may, at any time, issue written direction to Seller to stop or any part of the work called for by this Contract for a period of time not to exceed ninety (90) calendar days after written direction is delivered to the Seller and for any further period to which the parties may agree, which written discretion shall be specifically identified as a Stop Work Order issued under this provision. Upon receipt of the Stop Work Order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by this Contract during the period of work stoppage. Within the ninety (90) calendar day period following Seller's receipt of such Stop Work Order, or within any extension of that period, B-E shall either:
 - 1. cancel the Stop Work Order; or
 - 2. terminate the work covered by the Stop Work Order as provided in either the Termination for Convenience or the Termination for Default provision of this Contract.
- B. If a Stop Work Order issued under this provision is cancelled or the period of the Stop Work Order or any extension thereof expires, the Seller shall resume work. B-E shall make an equitable adjustment in the delivery schedule or Contract price, or both, and this Contract shall be modified in writing accordingly, if:
 - 1. the Stop Work Order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this Contract; and
 - 2. Seller asserts a claim for such adjustment within thirty (30) calendar days after the end of the period of work stoppage.
- C. If the Stop Work Order is not cancelled and the work covered by the Stop Work Order is terminated for the convenience of B-E and/or the Government in accordance with applicable provisions of this Contract, then B-E shall allow reasonable costs resulting from the Stop Work Order in arriving at any appropriate termination settlement. If the Stop Work Order is not cancelled and the work covered by the Stop Work Order is terminated for default in accordance with

applicable provisions of this Contract, B-E shall not allow, by equitable adjustment or otherwise, any costs or other expenses incurred by Seller resulting from the Stop Work Order.

10. TERMINATION FOR CONVENIENCE

B-E may terminate this Contract for its convenience in whole or, from time to time, in part, in accordance with the FAR clause titled "Termination for Convenience of the Government" set forth in 52.249-2 and in effect on the date of this Contract, which clause is incorporated herein by this reference except for paragraphs (c) and (i). The period for submittal of Seller's termination settlement proposal under referenced clause is hereby reduced to six (6) months, and the period for submittal of Seller's request for equitable adjustment is hereby reduced to forty-five (45) calendar days. In the referenced clause, the term "Contractor" shall mean Seller and the terms "Government" and "Contracting Officer" shall mean B-E. If this Contract is not issued under a Government prime contract or subcontract, the "record-keeping" requirement of said clause is deemed to be deleted.

11. TERMINATION FOR DEFAULT

A. B-E may terminate the whole or any part of this Contract under any of the following circumstances:

1. If Seller fails to deliver the goods or to perform the services required by this Contract within the time specified herein and any extension thereof granted by B-E in writing; or
2. If Seller fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this order in accordance with its terms, and in either of these two circumstances does not cure such failure within thirty (30) days after receipt of notice from B-E specifying such failure; or
3. In the event of suspension of Seller's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

B. B-E may require Seller to transfer title and deliver to B-E in the manner and to the extent directed by B-E.

1. Any completed goods; and
2. Such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufactured materials") as Seller has produced or acquired for the performance of this Contract, including the assignment to B-E of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which B-E has an interest. Payment for completed goods delivered to and accepted by B-E shall be at the Contract Price. Payment for manufactured materials delivered to and accepted by B-E and for the protection and preservation of property shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof, except that Seller shall not be entitled to profit. B-E may withhold from Seller monies otherwise due Seller for completed goods and/or manufacturing materials in such amounts as B-E determines necessary to protect B-E against loss due to outstanding liens or claims against said goods.

C. In the event B-E terminates this Contract for Seller's default, Seller shall be liable to pay B-E all damages and/or costs incurred by reason thereof, including re-procurement of Goods provided for in this Contract.

12. B-E PROPERTY

Seller agrees to keep all property furnished by B-E and all property to which B-E acquires title by virtue of this Contract segregated and clearly marked, and Seller will maintain a complete inventory thereof. Seller assumes all risk of loss, destruction or damage to such property, while in Seller's custody or control, and agrees to immediately notify B-E's Purchasing Representative, in writing, of any such loss, destruction or damaged. Upon termination or completion of this Contract, Seller will deliver such property, as directed by B-E, in good condition, subject to ordinary wear and tear plus normal manufacturing losses as determined by the B-E Purchasing Representative.

13. SUBCONTRACTING AND ASSIGNMENT

- A. Seller agrees that it will not subcontract, without B-E's prior written consent, for the design, development or procurement of the whole or any substantial portion of goods and services ordered hereunder. This limitation shall not apply to Seller's purchase of standard commercial suppliers or raw material.
- B. Neither this Contract nor any interest herein nor any claim hereunder shall be assigned by Seller either voluntarily or by operation of law without the prior written consent of B-E. No such consent shall be deemed to relieve Seller of its obligation to comply fully with the requirements hereof. Seller, may, however, without B-E's consent, assign monies due and to become due hereunder if the following conditions are met:
 - 1. B-E shall continue to have the right to exercise any and all of its rights under, settle any and all claims arising out of, and enter into amendments hereto, without notice to or consent of the assignee:
 - 2. The entire amount of monies is assigned to a single assignee, and shall not be subject to further assignment; or
 - 3. B-E is given notice of the assignment and all invoices submitted by Seller contain adequate reference to the assignment.

14. TITLE AND RISK OF LOSS

- A. Unless the terms of this Contract specifically provides for earlier passage of title, title to supplies or equipment covered by this Contract shall pass to B-E, regardless of when or where B-E takes physical possession.
- B. Unless otherwise provided, herein, risk of loss or damage to supplies or equipment covered by this Contract shall remain with the Seller until, and shall pass to B-E upon:
 - 1. Delivery of the supplies or equipment to a carrier, if transportation is F.O.B. origin
 - 2. Acceptance by B-E or delivery of possession of the supplies or equipment to B-E at the destination specified in this Contract, whichever is later, if transportation is F.O.B. destination.
- C. Notwithstanding (B) above, the risk of loss or damage to supplies or equipment which so fail to conform to this Contract as to give a right of rejection shall remain with Seller until cured or acceptance, at which time (B) above shall again apply.
- D. All supplies, equipment and other items delivered by Seller under this Contract and all property to be returned by Seller to B-E shall be free and clear of all liens and encumbrances whatsoever.

15. SELLER'S NONDISCLOSURE

Seller, shall not, without the written consent of B-E, either during or after the performance of the work required hereunder, use, other than for such performance, or disclose to any person other than a duly authorized representative of B-E any information, data, material or exhibit created, developed, produced or otherwise obtained in the course of the work required hereunder, or any information contained in reports, drawings, documents or other records furnished to Seller by B-E as determined by B-E. Nothing contained herein shall prevent Seller from making proper use of its experience gained in the performance of the work required hereunder. The restriction of this provision shall not apply to information in the prior possession of Seller or to information acquired by Seller from a source other than B-E that has the right to disclose such information to Seller, and which Seller, in turn, has the right to disclose, nor shall it limit any rights the Government may have in such information.

16. B-E'S USE OF DATA AND INFORMATION

Seller agrees that any data such as drawings, instructions or information furnished to B-E in connection with this Contract shall be free from confidential, proprietary or restrictive use markings, other than statutory patent/copyright, U.S. Government security notices or properly applied restrictive legends permitted by appropriate FAR or DFARS clauses incorporated herein. B-E, its agents or assignees, may duplicate or use such documents in connection with further manufacture, use or disposition of the materials furnished under this order, and may remove, obliterate or ignore any such markings as may be on such documents, unless such markings are specifically permitted by applicable FAR or DFARS clauses. Except as may be otherwise provided in this Contract, all information and data disclosed or furnished to B-E in connection herewith shall be deemed to be disclosed or furnished as part of the

consideration for this Contract, and Seller agrees not to assert any claims (except claims for patent infringement) by reason of any use, duplication or disclosure thereof.

17. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY

- A. Seller shall defend and hold harmless B-E, its customer, end-users and those for whom B-E may act as agent, from all loss or damage by reason of any and all actions or proceedings charging infringement or wrongful use of any patent, trademark, trade secret or copyright by reasons of sale or use of any goods, merchandise, software or data furnished hereunder, except for items which Seller has produced according to B-E or Government specifications supplied under this Contract.
- B. If the use or sale of any item, with respect to which Seller indemnifies B-E is enjoined as a result of such action or proceeding, Seller, at no expense to B-E, shall obtain for B-E, its customers and end-users, the right to use and sell said item or shall substitute an equivalent item acceptable to B-E and extend this same written indemnification with respect to such equivalent items. In the event that Seller is unable to secure such right of use for B-E, its end users and customers, or to secure an equivalent item as a substitute, Seller will indemnify B-E, its customers and end users for any and all losses or damages sustained by reason of such injunction.

18. NOTICE OF LABOR DISPUTES

- A. Whenever Seller has knowledge that any actual or potential labor disputes is delaying or threatening to delay the timely performance of this Contract, Seller shall immediately give notice thereof, and all relevant information with respect thereto, to B-E's Purchasing Representative, and shall further advise B-E of any material changes in such information as changes may occur.
- B. Seller agrees to insert the substance of this provision, including this paragraph (B) in any subcontract or Purchase Order issued hereunder, wherein all or any significant part of the work performed under the subcontract or Purchase Order, is to be performed by workers bound by a union contract or otherwise affiliated with a union guild or other association of employees.

19. DISPUTES (GENERAL)

- A. Pending the final resolution of any disputes involving this Contract, Seller agrees to proceed with performance of this Contract, including the delivery of goods, in accordance with B-E's instructions. Seller shall submit to B-E's authorized Purchasing Representative, a written demand for B-E's final decision regarding the disposition of any disputes between the parties relating to this contract, unless B-E, on its own initiative, has already rendered such a final decision. Any B-E final decision shall be expressly identified as such, shall be in writing, and shall be signed by B-E's authorized Purchasing Representative, except that B-E's failure to render a final decision within ninety (90) calendar days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions.
- B. B-E's final decision shall be conclusive and binding regarding this dispute unless Seller commences an action to contest such decision within ninety (90) days following the date of the final decision or within one (1) year following the accrual of the cause of the action, whichever is later. Any action to contest by the Seller shall be governed by the law of the State of New Jersey, without regard to choice of law principles, and said action shall be brought in, and only in, a court of competent jurisdiction in the State of New Jersey. Alternatively, the parties may agree to mediation or arbitration by mutual agreement. However, notwithstanding anything to the contrary in the foregoing, in the event that either Party deems it necessary to bring an action for injunctive relief to restrain a violation or threatened violation of this Contract, it may (but shall not be required to) bring any such action in any other tribunal having jurisdiction over any person participating in the violation or threatened violation.
- C. Seller shall cooperate fully with B-E in seeking a resolution of any dispute involving this Contract under the dispute procedure set forth in any applicable Government prime or higher-tier contract. If B-E elects to follow such procedures, Seller shall be bound by the final outcome of the dispute procedures if:
 - (1) B-E has afforded Seller an opportunity to participate in B-E's conduct of the dispute; or
 - (2) B-E, having decided to discontinue its own processing of the dispute has afforded Seller an opportunity to take over such processing completely; provided, however, that Seller agrees to inform and notify B-E as to status and outcome of the dispute proceeding.

D. B-E and Seller shall each bear its own costs of processing any dispute hereunder.

E. Procurement outside of the United States

For purchases made outside of the United States, in case of dispute, the Parties shall refer their dispute to the International Chamber of Commerce (ICC). The dispute shall be conducted before a single arbitrator in accordance with the proceeding rules applicable by the ICC. The award of the arbitrator shall be final and binding on the Parties and enforceable in a court of competent jurisdiction over the necessary Party or its assets. The location of such arbitration shall be Geneva, Switzerland and the proceedings shall be conducted in the English language.

20. RIGHTS AND REMEDIES

The rights and remedies of B-E herein are cumulative and are in addition to any other rights or remedies that B-E may have at law or in equity.

21. WAIVER AND SEVERABILITY

Any action or interaction by B-E or the failure of B-E, on any occasion, to enforce any right or provision of this Contract shall not be construed to be a waiver by B-E of its rights hereunder, and shall not prevent B-E from enforcing such provision or right on any future occasion. A determination that any portion of this Contract is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Contract.

22. ORDER OR PRECEDENCE

A. In the event of any inconsistency between or among the provisions, articles, attachments, or specifications which constitute this Contract, the following order of precedence shall apply:

- (1) all Special Provisions, including any attachments referenced or incorporated by those Special Provisions;
- (2) the General Provisions contained in these B-E General Provisions;
- (3) the specifications; and
- (4) all other attachments incorporated herein by reference.

(B) B-E's specifications shall prevail over any subsidiary documents referenced therein. Seller shall not use any specification in lieu of those contained in this Contract without written consent of B-E's Purchasing Representative.

23. COMPLIANCE WITH STATUTES AND REGULATIONS

(A) GENERAL: In the performance of this Contract, Seller shall comply with all applicable statutes and governmental rules, regulations and orders. Seller shall indemnify, hold harmless and defend B-E from and against all losses, costs, fees and damages arising directly or indirectly for any actual or alleged failure by Seller to comply with such statutes, rules, regulations and orders. Seller specifically agrees to indemnify and hold B-E harmless from any price reduction or credits against any B-E prime contract, which have been brought about by the Seller's failure to comply with provisions incorporated into this Contract requiring Seller to submit accurate, current and complete cost or pricing data.

(B) ANTI-KICKBACK ACT: The contract clause titled "Anti-Kickback Procedures" set forth in FAR 52.203-7 is made a part of this Contract by this reference with the following modifications: the term "Contractor" shall mean Seller and the term "Contracting Officer" shall mean the Contracting Officer cognizant of the Government prime contract or higher-tier subcontract under which this Contract was awarded.

- (1) By Seller's acceptance of this Contract, Seller warrants and represents to B-E that neither Seller nor any immediate or lower-tier subcontractor of Seller, nor any person acting on behalf of any of them, has engaged in conduct prohibited by the Anti-Kickback Act of 1986 (41 USC 51-58) relating to this Contract or any subcontracts or lower-tier subcontract under this order. Seller shall indemnify, defend and hold harmless B-E, its agents, officers and employees, from all losses, costs, fees and damages resulting directly or indirectly, in whole or in part, from any conduct prohibited as aforesaid in which Seller, any immediate or lower-tier subcontractor of

Seller or any person acting on behalf of any of them has engaged or hereafter engages relating to this Contract or any lower-tier subcontract under this order.

- (2) B-E shall have the right to withhold any sums due Seller under this Contract (a) if so directed pursuant to Section 6 of aforesaid Act or pursuant to the Anti-Kickback Act Procedures clause of the prime contract or higher-tier subcontract under which this Contract has been issued by the Contracting Officer or agency cognizant of the prime contract under which this Contract was awarded, or (b) to recoup losses, costs, fees and damages against the incurrence of which Seller has agreed in this clause to indemnify B-E. For purposes of this clause, definitions of the terms "subcontractor," "subcontract" and "person" shall be deemed to be those set forth in Section 2 of said Act.
- (3) Any report made pursuant to this clause shall be made to the Director of Materials at Breeze-Eastern, 35 Melanie Lane, Whippany, NJ 07981.

(C) Industrial Laws

- (1) Seller's relationship to B-E in the performance of this Contract is that of an independent contractor. Neither Seller nor any of the persons furnishing materials or performing work or services which are required by this Contract are employees of B-E. Seller shall, at its own expense, comply with all laws and regulations and assume all liabilities or obligations imposed by any one or more of said laws and regulations thereunder with respect to this Contract, including but not limited to, the applicable provisions of the Fair Labor Standards Act of 1938, as amended and the Occupational Safety and Health Act of 1970, including all regulations, standards and amendments issued pursuant thereto.
- (2) All goods and services furnished by Seller under this Contract shall comply with the above referenced laws and regulations. In furtherance of that compliance, each invoice presented under this order shall contain the following certification:

"Seller hereby certifies that these goods were produced in compliance with all applicable wage and labor statutes and regulations, including relevant requirements of the Fair Labor Standards Act, as amended, and U.S. Department of Labor Regulations and orders issued under Section 14 thereof."

24. GRATUITIES

By accepting this Contract, Seller covenants and warrants that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by Seller, or any agent or representative of Seller, to any officer or employee of B-E or B-E's customer, including, but not limited to, the U.S. Government for the purpose of securing this or any Contract or securing favorable treatment with respect to the awarding or the making of any determination regarding the performance of such Contract.

25. AUDIT AND INSPECTION OF RECORDS

Seller shall keep adequate records of payable hours of direct labor and all costs of the performance of this Contract, which records shall be subject to audit by B-E and if applicable, its Government customer(s) in the event of termination, other equitable adjustment or with respect to any Contract for which the Seller submits progress billings or for which Seller's price is based on time and cost of materials.

26. B-E FURNISHED TOOLS, MATERIALS AND DATA

- (A) All design, tools, patterns, drawings, specifications and any other data, information, materials, equipment and the like either:
 - (1) made or procured by Seller especially for producing the goods covered by this Contract; or
 - (2) furnished by B-E to Seller for use in the manufacture of the goods hereunder, shall become or remain B-E's property, and Seller shall not use any proprietary data related to such property in the production, manufacture or design of any other articles or materials or for the production or manufacture of quantities larger than those specified herein, without first obtaining B-E's written consent thereto.
- (B) Seller shall maintain a current inventory list and identify all such property and products furnished by B-E. Seller shall further be fully responsible for all property upon delivery to Seller until

redelivery thereof to B-E, and shall promptly, upon the completion of the work, deliver such property and productions therefrom to B-E; or if B-E demands delivery prior to completion of the work, Seller shall deliver such property and products to B-E in accordance with the terms of said demand. In all instances, Seller shall establish and maintain procedures for the property. Seller shall establish and maintain procedures for the adequate storage, maintenance and inspection of such property and shall maintain inspection records available to B-E upon request.

- (C) Notwithstanding the foregoing, Seller may produce articles or materials for direct sale to the U.S. Government where the Government has the right to use equipment, tools, gauges, designs, drawings, engineering data and other technical or proprietary information furnished by B-E and required to produce such articles or materials.
- (D) Seller agrees that the drawings, tooling and technical data furnished hereunder by B-E are proprietary to B-E and for its exclusive use. Seller further agrees that production, overhaul or sale of materials using these proprietary drawings, data or tooling for or to anyone other than B-E is expressly forbidden without the prior written consent of B-E's Purchasing Representative.
- (E) If this Contract is placed under a U.S. Government prime contract, Seller shall immediately notify B-E in the event that Seller receives a request for information or a solicitation for an offer from the Government which would require the use of the drawing, tooling or technical data described in (D) above for sales to the U.S. Government. Upon such notification, B-E shall advise Seller whether the request for information or solicitation calls for items or concerns a subject in which B-E claims proprietary rights. Seller may use such drawings, data and/or tooling for the expressed purpose of responding to requests for information or selling directly to the Government, to the extent that the Government claims "unlimited rights" or "government purpose license rights" under any applicable prime contract, unless Seller is notified by B-E that it disputes a Government claim to such "unlimited" or "government purpose license rights."

27. OFFSET AND COPRODUCTION

- (A) To the extent that the goods ordered hereunder are components of B-E products/systems sold to a foreign nation or concern, and in recognition that such sale results directly or indirectly in business opportunities, sales or revenue for the Seller, the Seller agrees to cooperate with B-E in the fulfillment of any offset program obligations that B-E may be required to accept as a condition of such foreign sale. Seller will assume and discharge a proportionate share of said offset obligation(s), either directly or through a mutually agreeable third party.

Seller's proportionate share of B-E's offset obligations shall be defined as follows: Seller's value per shipset X number of shipsets for the foreign customer (including spares) X offset percentage. Seller's obligations shall be discharged in accordance with the ground rules negotiated between B-E and the foreign customer.

The offset commitment set forth herein is a material requirement of the applicable Contract issued by B-E to the Seller, and notwithstanding any other provisions of such Contracts, Seller shall not be relieved of such requirement unless B-E is so relieved by the foreign customer, except insofar as the Seller is otherwise relieved for performance of such Contracts.

- (B) B-E expressly reserves the right to all industrial benefits and other offset credits arising with respect to any goods ordered hereunder, including any related subcontracts issued by the Seller to sources in the foreign customer's country. B-E also reserves the right to obtain from the Seller all information in such form as may be required to enable B-E to obtain the aforementioned benefits. All options, spares orders or similar requirements obtained by the Seller with respect to its procurement of any goods ordered hereunder shall similarly be subjected to the provisions of this paragraph.

28. PRICE WARRANTY

Seller warrants that the price of goods or services to be furnished to B-E under this Contract do not exceed the price charged by the Seller to any other customer purchasing the same goods or services in like or smaller quantities and under similar conditions of purchase.

29. NEWS RELEASE AND PUBLIC ANNOUNCEMENTS

Seller shall issue no news release, public announcement, advertisement, denial or confirmation of all or any part of the subject matter of this Contract or any phase of any program hereunder without the prior written approval of B-E.

30. FARS, DFARS, AND NASA PROVISIONS FOR GOVERNMENT FIRM FIXED PRICE CONTRACTS. (When the materials or products furnished are for use in connection with a Government contract or subcontract, in addition to the General Provisions, the following provisions shall apply, as required by the terms of the prime contract or by operation of law or regulation. In the event a conflict between these FAR provisions and the General Provisions, the FAR provision shall control).

The following clauses set forth in the FAR in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms "Government", "Contracting Officer" and "Contractor" shall be revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. "Subcontractor", however, shall mean "Seller's Subcontractor" under the Purchase Order.

(A) APPLICABLE TO ALL ORDERS:

1	Security Requirements	52.204-2
2	Material Requirements	52.211-5
3	Defense Priority and Allocation Requirements	52.211-15
4	Utilization of Small Business Concerns	52.219-8
5	Notice to the Government of Labor Disputes	52.222-1
6	Notice of Radioactive Materials	52.223-7
7	Hazardous Material Identification and MSDS - ("Government" means Government & Buyer)	52.223-3
8	Ozone Depleting Substances	52.223-11
9	Privacy Act	52.224-2
10	Buy American Act – Balance of Payments Program Supplies	52.225-1
11	Duty-Free Entry	52.225-8
12	Restrictions on Certain Foreign Purchases	52.225-13
13	Authorization and Consent – Alternate I	52.227-1
14	Refund of Royalties	52.227-9
15	Filing of Patent Applications – Classified Subject Matter	52.227-10
16	Patent Rights – Retention by the Contractor (Short Form)	52.227-11
17	Patent Rights – Retention by the Contractor (Long Form)	52.227-12
18	Rights in Data – General	52.227-14
19	Commercial Computer Software – Restricted Rights	52.227-19
20	Insurance – Work on a Government Installation	52.228-5
21	Industrial Resources Developed under Defense Production Act Title III	52.234-1
22	Accident Prevention	52.236-13
23	Protection of Government Buildings, Equipment and Vegetation	52.237-2
24	Competition in Subcontracting	52.244-5
25	Subcontracts for Commercial Items	52.244-6
26	Government Property (Fixed Price Contracts). "Government" means "Government" and/or "Buyer". The fourth sentence of paragraph (h) is changed to read "Neither the Government nor the Buyer shall liable..."	52.245-2
27	Special Tooling – In paragraph (C) "Government" means "Government" or "Buyer"	52.245-17
28	Special Test Equipment – In paragraph (b)(4) "Government" means "Government" or "Buyer"	52.245-18
29	Government Property furnished "As Is"	52.245-19
30	Responsibility for Supplies	52.246-16
31	Preference for U.S. Flag Carriers	52.247-63
32	Termination for Convenience of the Government (Fixed Price) "Government" shall mean "Buyer". In paragraph (d) the term "45 days" is changed to "90 days". The term "one-year" in paragraph (e) is changed to "six months". The term "90 days" in paragraph (I) is changed to "forty-five days".	52.249-2

(B) Orders over \$10,000 also include the following:

1	Walsh-Healy Public Contracts Act	52.222-20
2	Prohibition of Segregated Facilities	52.222-21
3	Affirmative Action Compliance	52.222-25
4	Equal Opportunity	52.222-26
5	Equal Opportunity for Special Disabled and Vietnam Era Veterans	52.222-35
6	Affirmative Action for Workers with Disabilities	52.222-36
7	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-37

(B) Orders over \$100,000 also include the following:

1	Restrictions on Subcontractor Sales to the Government	52.203-6
2	Anti-Kickback Procedures (less paragraph (c)(1))	52.203-7
3	Limitation on Payments to Influence Certain Federal Transactions	52.203-12
4	Audit and Records – Negotiation	52.215-2
5	Integrity of Unit Prices (less paragraph (b))	52.215-14
6	Contract Work Hours and Safety Standards Act Overtime Compensation	52.222-4
7	Toxic Chemical Release Reporting (less paragraph (e))	52.223-14
8	Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
9	Preference for Privately Owned U.S. Flag Commercial Vessels	52.247-64
10	Value Engineering	52.248-1

(B) Orders over \$500,000 Also Include the Following:

1	Pension Adjustments and Asset Reversions	52.215-15
2	Reversion or Adjustment of Plans for Post-retirement benefits (PRB) other than Pensions	52.215-18
3	Notification of Ownership Changes	52.215-19
4	Small Business Subcontracting Plan	52.219-9

(C) Unless Otherwise Exempt Also Include the Following:

1	Subcontractor Cost or Price Data	52.215-12
2	Subcontractor Cost or Pricing Data – Modifications	52.215-13
3	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data	52.215-20
4	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications	52.215-21
5	Cost Accounting Standards	52.230-2
6	Disclosure and Consistency of Cost Accounting Standards	52.230-3
7	Cost Accounting Standards – Educational Institutions	52.230-5
8	Administration of Cost Accounting Standards	52.230-6

31. CERTIFICATIONS

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

(A)	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$100,000).	52.203-11
(B)	Certification Regarding Debarment, Suspension, or Proposed Debarment and Other Responsibility Matters (over \$25,000)	52.209-5
(C)	Previous Contracts and Compliance Reports (over \$10,000)	52.222-22
(D)	Certification of Toxic Chemical Release Reporting (over \$100,000)	52.223-13

32. ADDITIONAL CLAUSES

(A) Cost Accounting Standards (Applicable unless otherwise exempt)

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

33. TRUTH IN NEGOTIATIONS

Cost or Pricing Data (applicable only if certified cost or pricing data has been provided).

The clause entitled "Subcontractor Cost or Pricing Data" is a part of this Purchase Order if the Seller was required to furnish cost and pricing data and a Certificate of Current Cost or Pricing Data for this Purchase Order. If it was not required to furnish such data and Certificate, the clause Entitled "Subcontractor Cost or Pricing Data-Modification" is a part of this Purchase Order. Seller shall update its proposal and re-certify its cost or pricing data whenever costs, factors, or prices change such that cost or pricing data previously furnished is no longer accurate, current or complete.

Indemnification

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete or current; the Seller shall indemnify the Buyer in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual sub-contract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

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

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

Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit in excess of \$550,000* and resulting from a change in the prime contract, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

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

*Unless otherwise required by the Buyer.

34. Disputes – Government Contracts

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

- i Any dispute arising under this Purchase Order relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with paragraph (ii) below. All other disputes will be resolved by section 19, Disputes in the General Terms and Conditions of Purchase.
- ii
 1. Notwithstanding any other provisions in this Purchase Order, any decision of the Contracting Officer under the prime contract which binds the buyer shall bind both Buyer and Seller to the extent that it relates to this Purchase Order provided that:
 - a. The Buyer notifies with reasonable promptness the Seller of such decision and
 - b. The Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
 - c. If Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.
 2. Any decision upon such appeal, when final, shall be binding upon the Seller.

3. The Seller shall keep the Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.
4. The Seller shall indemnify and save harmless from any and all liability of any kind incurred by or imputed to Buyer under section 5, "Fraudulent Claims," of the Contracts Disputes Act of 1978, as amended, if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of the Seller.
- iii. Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this Purchase Order, the Seller shall proceed diligently, as directed by the Buyer, with the performance of this Purchase Order.
- iv. Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgement by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.
- v. As used in this clause, the word "appeal" means an appeal taken under the Contracts Disputes Act of 1978, as amended.

35. General Government Contract Provisions from the Defense Federal Acquisitions Regulations

General Provisions

When the materials or products furnished are for use in connection with a U.S. Government Department of Defense contract or subcontract, in addition to the General Provisions and the FAR provisions, the following provisions shall apply, as required by the terms of the prime contract or by operation of law or regulation. In the event of a conflict between these DFARS provisions and the General Provisions or the FAR provisions, the DFARS provisions shall control.

The following clauses set forth in the DFARS in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed below, the terms "Government", "Contracting Officer" and "Contractor" shall be revised to suitably identify the contracting parties under this Purchase Order and effect the proper intent of the provision except where further clarified or modified below. "Subcontractor", however, shall mean "Seller's Subcontractor" under this Purchase Order. The Seller, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

Title of Clause	DFARS
1. Disclosure of Information	252.204-7000
2. Intent to Furnish Precious Metals as Government Furnished Material	252.208-7000
3. Restrictions on Employment of Personnel	252.222-7000
4. Restrictions on the use of Mandatory Arbitration Agreements	252.222-7006
5. Hazard Warning Labels (fill in State where this Purchase Order will be performed)	252.223-7001
6. Safety Precautions for Ammunition and Explosives	252.223-7002
7. Change in Place of Performance – Ammunition and Explosives	252.223-7003
8. Prohibition on Storage and Disposal of Toxic and Hazardous Materials	252.223-7006
9. Safeguarding Sensitive Conventional Arms, Ammunition and Explosives.	252.223-7007
10. Buy American Act and Balance of Payments Program	252.225-7001
11. Qualifying Country Sources as Subcontractors	252.225-7002
12. Preference for Certain Domestic Commodities	252.225-7012
13. Preference for Domestic Specialty Metals (Alt 1)	252.225-7014
14. Preferences for Domestic hand or Measuring Tools	252.225-7015
15. Restriction on Acquisition of Ball and Roller Bearings	225.225-7016
16. Restriction on Acquisition of Foreign Anchor and Mooring Chain	252.225-7019
17. Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber	252.225-7022
18. Restriction on the Acquisition of Forgings	252.225-7025
19. Restriction on Contingent Fees for Foreign Military Sales (blank is filled in "zero").	252.225-7027
20. Exclusionary Policies and Practices of Foreign Governments	252.225-7028
21. Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate	252.225-7030
22. Secondary Arab Boycott of Israel	252.225-7031
23. Rights in Technical Data – Noncommercial Items	252.227-7013
24. Rights in Noncommercial Computer Software and Noncommercial	252.227-7014

Computer Software Documentation.	
25. Technical Data – Commercial Items	252.227-7015
26. Rights in Bid or Proposal Information	252.227-7016
27. Identification and Assertion of Use, Release, or Disclosure Restrictions.	252.227-7017
28. Validation of Asserted Restrictions – Computer Software	252.227-7019
29. Limitation on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.	252.227-7025
30. Deferred Delivery of Technical Data or Computer Software	252.227-7026
31. Deferred Ordering of Technical Data or Computer Software	252.227-7027
32. Technical Data or Computer Software Previously Delivered to the Government.	252.227-7028
33. Technical Data – Withholding of Payment	252.227-7030
34. Patents – Subcontracts	252.227-7034
35. Validation of Restrictive Markings on Technical Data	252.227-7037
36. Patents – Reporting of Subject Inventions	252.227-7039
37. Ground and Flight Risk	252.228-7001
38. Aircraft Flight Risks	252.228-7002
39. Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.	252.228-7005
40. Supplemental Cost Principles (first tier subcontractors only)	252.231-7000
41. Earned Value Management System (applicable only when Buyer specifically states elsewhere in the Purchase Order).	252.234-7001
42. Frequency Authorization	252.235-7003
43. Telecommunications Security Equipment, Devices, Techniques and Services.	252.239-7016
44. Cost Schedule Status Report (applicable only when Buyer specifically states elsewhere in the Purchase Order).	252.242-7005
45. Subcontracts for Commercial Items and Commercial Components	252.244-7000
46. Notification of Transportation of Supplies by Sea	252.247-7024

Orders Over \$100,000 Also Include The Following:

47. Prohibition on Persons Convicted of Fraud or Other Defense Related Felonies.	252.203-7001
48. Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate – Range Nuclear Forces (INF) Treaty	252.209-7000
49. Reporting of Central Performance Outside the United States (first tier subcontractors only).	252.225-7004
50. Transportation of Supplies by Sea	525.247-7023
51. Notification of Anticipated Contract Termination or Reduction	252.249-7002

Orders Over \$500,000 Also Include The Following:

52. Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.	252.219-7003
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Orders Over \$1,000,000 Also Include The Following:

53. Acquisition Streamlining	252.211-7000
54. Waiver of United Kingdom Levies	252.225-7032

36. NASA Contracts.

The following clauses are incorporated by reference from the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation Supplement and apply to contracts placed by B-E in connection with NASA contracts to the extent indicated. In addition, all NASA FAR Supplemental clauses required by the U.S. Government by statutes, regulation or otherwise to be flowed down to Seller are hereby incorporated into this Contract by this reference, whether or not they are explicitly referenced in this Article 36. In all of the following clauses, "Contractor" and "Offeror" mean "Seller and "Government" and "Contracting Officer" mean B-E and/or Government. Unless otherwise provided, the clauses are those in effect as of the date of this Contract.

- (1) 1852.204-70 Report on NASA Subcontracts (excluding paragraph (e)). This clause applies only if this Contract exceeds \$50,000.
- (2) 1852.219-14 Use of Rural Area Small Businesses.

- (3) 1852.223-70 Safety and Health. This clause applies only if this Contract exceeds \$1,000,000 or construction repairs or alterations in excess of \$25,000 is involved, or it involves the use of hazardous materials or operations.
- (4) 1852.223-71 Frequency Authorization. This clause applies only if this Contract requires the development, production, construction, testing or operation of a device for which a radio frequency authorization is required.
- (5) 1852.223-72 Potentially Hazard Items.
- (6) 1852.227-14 Rights in Data - General. This clause applies only if data will be produced, furnished or acquired under this Contract except contracts for basic or applied research with universities or colleges.
- (7) 1852.227-70 New Technology.
- (8) 1852.227-72 Designation of New Technology Representative and Patent Representative.
- (9) 1852.244-70 Geographic Participation in the Aerospace Program. This clause applies only if this Contract is for \$100,000 or more.
- (10) 1852.245-73 Financial Reporting of Government-Owned/Contract-Held Property.
- (11) 1852.252-70 Compliance with NASA FAR Supplement.

37. EQUAL OPPORTUNITY FOR VETERANS AND THE DISABLED

For orders which are identified to relate to a covered U.S. Government contract or subcontract, the following additional terms and conditions apply (see 41 C.F.R §§ 60-300.5 and 60-741.5):

- A) EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS (The definitions set forth in 41 C.F.R § 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.)
 - 1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veteran(s)") in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures.
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 - iii. Rates of pay or any other form of compensation and changes in compensation.
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - v. Leaves of absence, sick leave, or any other leave.
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
 - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 - viii. Activities sponsored by the contractor including social or recreational programs.
 - ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that:
(a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.
5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
6. As used in this clause:
 - i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
 - ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board,

lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

- iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
11. The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
12. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

B. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

1. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
 5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.
 6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
 7. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

38. ITAR COMPLIANCE

- (A) SELLER warrants that all activities performed, directly or indirectly, by, through or on behalf of SELLER and BUYER pursuant to, or in connection with, this Purchase Order, or in furtherance of its objective, shall be carried out in form and substance in accordance with all applicable laws, regulations, provisions and policies of the United States of America. Without limiting the generality of the foregoing, SELLER warrants that it will:
- (1) Comply in all respects with the United States Export Administration Act (EAA), as amended, and its regulations, and the United States Arms Export Control Act (AECA), as amended, and its regulations, which provide generally that no commodities or technical data, including any hardware, software, or other technical data (or direct products thereof) provided under this Purchase Order, shall be disclosed, exported or re-exported, directly or indirectly, without first obtaining all prior approvals from the U.S. Department of Commerce as required by the EAA and its regulations, or the U.S. Department of State as required by AECA and its regulations; and
 - (2) Comply in all respects with the United States Foreign Assets Control Regulations, as amended, which provide generally that companies under the jurisdiction of the United States may not engage in any dealings or transactions, directly or indirectly, with foreign countries embargoed by the United States, or foreign nationals and companies identified by the United States as representing the interests of such embargoed countries, which currently include Cuba, Iran, Iraq, Libya, North Korea, Rwanda, Syria, Sudan, certain territories of the former Yugoslavia, and the National Union for the Total Independence of Angola (UNITA), as well as other countries so designated from time to time by the U.S. government. Such dealings and transactions include, without limitation, any transfers, withdrawals, or exportations of any property, or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States.