

## SECTION 4A – GENERAL CONDITIONS



### NON COMMERCIAL ITEM

**Bechtel National Inc.**

Pueblo Chemical Agent Destruction Pilot Plant Project

---

## TABLE OF CONTENTS

<u>GC</u>	<u>TITLE</u>	<u>PAGE NO.</u>
GC-1	DEFINITIONS .....	2
GC-2	ENTIRE AGREEMENT .....	2
GC-3	PURCHASE ORDER INTERPRETATION.....	2
GC-4	CHANGES .....	2
GC-5	PRICE AND PAYMENT .....	3
GC-6	DELIVERY .....	5
GC-7	TITLE AND RISK OF LOSS.....	6
GC-8	EXPEDITING .....	6
GC-9	QUALITY STANDARDS .....	6
GC-10	WARRANTIES AND GUARANTEES .....	6
GC-11	INFRINGEMENT.....	7
GC-12	COMPLIANCE .....	7
GC-13	ASSIGNMENT .....	8
GC-14	SUSPENSION.....	8
GC-15	TERMINATION FOR CONVENIENCE .....	8
GC-16	TERMINATION FOR DEFAULT .....	8
GC-17	DISPUTES .....	9
GC-18	NON-WAIVER.....	9
GC-19	COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.....	10
GC-20	APPLICABLE LAW .....	10
GC-21	REPRESENTATIONS AND CERTIFICATIONS .....	10
GC-22	SELLER TERMS AND CONDITIONS EXCLUDED.....	10
GC-23	UNITED STATES GOVERNMENT FLOW DOWN REQUIREMENTS .....	10
GC-24	RECORDS AND AUDIT.....	10



## **GC-1 DEFINITIONS**

"PURCHASE ORDER" means this agreement, including the General Conditions, all attachments, appendices, sections, exhibits, schedules, and revisions hereto (each of which is hereby incorporated herein by reference), as issued from time to time.

"BECHTEL" means Bechtel National Inc.

"BUYER" means BECHTEL whether acting on its own behalf or as agent for OWNER.

"Government" means each and every branch of the government of the United States and each department and agency thereunder.

"Jobsite" means Pueblo Chemical Agent Destruction Pilot Plant Project at the Pueblo Chemical Depot located in Pueblo, CO.

"OWNER" means the **Government** and its authorized representatives and successors in interest.

"PRODUCT" means the goods, materials, articles, equipment, supplies, drawings, data, processes and all other property and services, including design, expediting, inspection, delivery, installation, and testing, specified or required to furnish the items ordered hereunder, which are required in the performance of BUYER'S Prime Contract with the OWNER.

"Project" means Pueblo Chemical Agent Destruction Pilot Plant Project

"SELLER" means the company, corporation, partnership, individual, or other entity to which this PURCHASE ORDER is issued, its authorized representatives, successors, and permitted assigns.

## **GC-2 ENTIRE AGREEMENT**

This Non Commercial Items Purchase Order ("PURCHASE ORDER") embodies the entire agreement between BUYER and SELLER. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions, order acknowledgments or other of SELLER'S forms has any effect on this PURCHASE ORDER unless specifically incorporated herein.

## **GC-3 PURCHASE ORDER INTERPRETATION**

All questions concerning interpretation or clarification of this PURCHASE ORDER or applicable standards and codes, (including the discovery of conflicts, discrepancies, errors or omissions) or the acceptable performance thereof by SELLER, shall be immediately submitted in writing to BUYER for resolution. Subject to the provisions of the clause titled "CHANGES," all determinations, instructions and clarifications of BUYER shall be final and conclusive unless determined to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not subject to substantial evidence.

## **GC-4 CHANGES**

(a) BUYER, through its authorized procurement representative, may at any time direct, in writing, changes, including but not limited to changes in any one or more of the following:

- (1) drawings or specifications;
- (2) additions to or deletions from quantities ordered;



- (3) delivery schedule;
  - (4) method of shipment or packing; and
  - (5) place of delivery.
- (b) If any such change causes an increase or decrease in the cost of or timing required to provide the PRODUCT(S), an equitable adjustment may be made in the price or delivery schedule, or both, and the PURCHASE ORDER shall be modified by written amendments or revisions executed by authorized representatives. Any request by the SELLER for adjustment under this Changes clause must be asserted within thirty (30) days from the date of receipt by the SELLER of the notification of change. However, nothing in this clause shall excuse SELLER from proceeding with the order as changed.
- (c) If this PURCHASE ORDER requires BUYER to review and comment on SELLER'S technical documents, SELLER shall submit, within thirty (30) days from the date of SELLER'S receipt of such comments, any request for adjustment which would result from implementation of BUYER'S comments. No adjustment will be made hereunder unless BUYER, through its authorized procurement representative, confirms the change in writing.
- (d) No modifications of these General Conditions shall be valid unless reduced to writing and signed by both parties.

**GC-5 PRICE AND PAYMENT**

- (a) The prices herein specified, unless otherwise expressly stated, shall exclude all taxes and duties of any kind which either party is required to pay with respect to the sale of PRODUCTS covered by this PURCHASE ORDER, but shall include all charges and expenses in connection with the packing of the PRODUCTS and their carriage to the place of delivery to the BUYER unless specifically excluded. SELLER shall be paid, except as otherwise stated in this PURCHASE ORDER, upon submission of proper invoices, the prices stipulated herein for PRODUCTS delivered and accepted; however, payment may be withheld or portions thereof may be deducted if in BUYER'S reasonable opinion SELLER is not performing in accordance with the provisions of this PURCHASE ORDER or if proper set-offs in favor of BUYER in other transactions are asserted. BUYER reserves the right to make payments due hereunder directly to suppliers of SELLER whenever BUYER has reason to believe SELLER has not paid or is likely not to pay such suppliers amounts due them on a timely basis.
- (b) Options: If options are authorized, the price for those options shall be in accordance with the price identified in the PURCHASE ORDER at the time the option is authorized.
- (c) The SELLER shall be notified if any price on the PURCHASE ORDER exceeds pricing obtained through market analysis. If, as a result of market analysis, the SELLER price(s) appears to be unreasonable, immediate price discussions will be conducted with the SELLER. BUYER reserves the right to procure by other means those items whose price exceeds market value based upon market analysis.

BUYER shall have the right to conduct an audit of the SELLER'S records to validate SELLER'S price for discounted price items. BUYER must provide the SELLER written notice of the audit ten (10) business days prior to the audit.

- (d) Economic Price Adjustments

Adjustment to the fixed-price for goods or services under this PURCHASE ORDER will be considered by BUYER as negotiated based on the PURCHASE ORDER schedule and Progress Milestones and upon SELLER's certification that the proposed adjustment is solely attributable to



the effect of inflationary factors upon SELLER's costs under this PURCHASE ORDER. Specific inflationary impacts must be significant enough to warrant an adjustment and must be detailed in a written price adjustment request. In no case shall the adjustment include profit.

- i. SELLER warrants that the prices in this PURCHASE ORDER do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- ii. Requests for price adjustments shall be subject to the following conditions:
  - a. Option year price adjustments shall be submitted formally in writing 90 days before the completion date of the PURCHASE ORDER.
  - b. No unit price adjustment shall be requested unless the SELLER's item cost is decreased or increased. The SELLER is required to furnish written evidence (subject to audit) to BUYER of the SELLER's cost changes. Invoices and manufacturers' distributor cost sheets will be considered such evidence. The distributor's cost sheet and/or invoice must be highlighted and submitted consecutively as the items are listed in the PURCHASE ORDER. Freight charges and other miscellaneous costs will not be considered in cost increases. An acceptable format for submission of proposed price changes shall be as follows: Manuf., Part No., Old Cost, New Cost, Old Price, New Price (e.g., XYZ 001 \$1.35 \$1.55 \$1.48 \$1.68). BUYER may cover the substantiated increase in cost for firm fixed price items, however, SELLER's gross dollar markup remains the same. The price increase formula is as follows:  $(\text{Old Price} - \text{Old Cost}) + \text{New Cost} = \text{New Price}$
  - c. BUYER must approve, in writing, any price adjustment. All items on any PURCHASE ORDER Releases shall be delivered to BUYER at the established PURCHASE ORDER price in effect on the date of award of the Release by the BUYER, not the date of product delivery by the SELLER.
  - d. If SELLER's net prices to others, for like kind and quantity as those ordered by BUYER, are reduced, or SELLER receives benefit of a price decrease from the manufacturer, SELLER shall give BUYER a corresponding price reduction(s). SELLER shall reduce its price by the amount its purchase price is reduced, i.e. the gross dollar markup shall remain the same. SELLER shall notify BUYER, in writing, promptly, not more than 30 days after being effected, of the price reduction(s). Price reductions will become effective upon BUYER's issuance of a revision that revises the applicable firm-fixed unit prices.
  - e. SELLER will, if requesting a price adjustment, identify all items where costs have decreased.
  - f. BUYER shall, until the expiration of three years after final payment of the PURCHASE ORDER, have access to and the right to examine any directly pertinent books, documents, papers and records of SELLER.
- (e) For items recommended by SELLER for addition to the PURCHASE ORDER, SELLER must establish reasonableness of the proposed price(s) by furnishing the following with each detailed item description: Copies of the current published price list(s) provided to the SELLER's most favored customer purchasing the same item(s) in like or comparable quantities or other documentation acceptable to BUYER, the manufacturer, manufacturer's part number, and SELLER's stock number. When requested, the SELLER shall disclose to BUYER the amount of all price reductions of any kind whatsoever such as trade discounts, cash discounts, and rebates applicable to the item(s).



- (f) SELLER shall invoice BUYER not more frequently than the established invoice date/term or for repetitious activities, not more frequently than once a month, in accordance with the payment terms of this PURCHASE ORDER, based on goods received by BUYER. Credits resulting from returns, substitutions, or pricing discrepancies discovered through audit will be deducted from any gross payment due.
- (g) SELLER shall maintain at all times adequate cost records and accounts related to this PURCHASE ORDER. BUYER shall have the right to examine, with advance notification, such records and accounts for the limited purpose of verifying requests for payment when costs are the basis for such payment or for evaluating the reasonableness of proposed price adjustment requests.
- (h) BUYER may, as a condition precedent to any payment, require SELLER to submit for itself, its subcontractors, immediate and remote, and all material suppliers, vendors, laborers and other parties acting through or under it, complete waivers and releases of all claims against BUYER and Government arising under or by virtue of this PURCHASE ORDER. In addition, and upon BUYER'S request, SELLER shall furnish acceptable evidence that all such claims have been satisfied.
- (i) Payment terms are net sixty (60) days from receipt and acceptance of the PRODUCTS, including required submittals, and receipt of proper invoice, whichever is later, subject to any limitations as provided elsewhere in this PURCHASE ORDER.
- (j) If PURCHASE ORDER fulfillment is by a single shipment, SELLER shall submit an original invoice and one (1) copy to BUYER at the time of shipment and any cash discount period offered by SELLER shall be computed from the later date of PRODUCTS and submittals receipt or BUYER'S receipt of a proper invoice. The foregoing payment and cash discount periods shall be extended by the period of any delay caused by an error in the invoice requiring correction.
- (k) If PURCHASE ORDER fulfillment occurs by more than one shipment, SELLER shall submit only one (1) invoice per month, after shipment is made. Any cash discount period offered by SELLER shall be computed from the date of BUYER'S receipt of a proper invoice.
- (l) BUYER may elect to pay SELLER through BUYER'S electronic funds transfer (EFT) process. SELLER shall advise BUYER in writing within thirty (30) days prior to the due date of SELLER'S first invoice of the bank and account number to which EFT payments may be made to SELLER.

**GC-6 DELIVERY**

Timely performance and delivery in accordance with the schedule herein are essential to this PURCHASE ORDER. However, SELLER will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition which is beyond SELLER'S reasonable control without SELLER'S fault or negligence. Delays attributable to and within the control of SELLER'S suppliers or subcontractors of any tier shall be deemed delays within the control of SELLER. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, epidemics, war or riot are examples of events which will be excusable for being beyond SELLER'S reasonable control, only upon fulfillment of the following conditions; (a) within seven (7) days of the commencement of any excusable delay, SELLER shall provide BUYER with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof; and (b) within seven (7) days of the cessation of the event causing delay, SELLER shall provide BUYER with written notice of actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

**GC-7 TITLE AND RISK OF LOSS**

Except as otherwise provided herein, all PRODUCTS furnished by SELLER hereunder shall become the property of BUYER or OWNER, as applicable, upon payment therefor or upon delivery, whichever occurs earlier. Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss or damage to the PRODUCTS until delivery thereof in accordance with the delivery provisions of this PURCHASE ORDER. Upon such delivery, SELLER shall cease to bear the risk of loss or damage; provided however, that any loss or damage, whenever occurring, which results from SELLER'S nonconforming packaging or crating shall be borne by SELLER.

**GC-8 EXPEDITING**

The PRODUCTS, including all warranty work, shall be subject to expediting by BUYER. BUYER'S representatives shall be afforded free access during working hours to SELLER'S plants, and SELLER agrees to procure a similar right for BUYER, for expediting purposes with respect to SELLER'S suppliers. As required by BUYER, SELLER shall supply schedules, progress reports and unpriced copies of SELLER'S purchase orders and subcontracts for BUYER'S use in expediting. SELLER shall notify BUYER in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. Slippage in SELLER'S schedule may be deemed to be reasonable grounds for insecurity in which event BUYER may demand in writing that SELLER provide adequate assurances that SELLER will perform on time.

**GC-9 QUALITY STANDARDS**

- (a) SELLER shall ensure that the PRODUCTS comply with the standards of quality specified by this PURCHASE ORDER or those customary in the industry if no requirement is specified. BUYER'S quality surveillance representative shall be afforded free access during working hours to plants of SELLER and SELLER agrees to procure a similar right for BUYER for quality surveillance purposes with respect to SELLER'S suppliers in order to monitor compliance with quality requirements. BUYER'S right to inspect, examine, and test the PRODUCTS shall extend through the manufacturing process, the time of shipment and a reasonable time after arrival at the final destination. SELLER'S failure to adhere to the standards of quality required under this PURCHASE ORDER shall be deemed to be reasonable grounds for insecurity. BUYER may demand in writing, that SELLER provide adequate assurances of SELLER'S ability to meet said standards.
- (b) The PRODUCTS shall not be deemed accepted until finally inspected and accepted by BUYER'S representative at final destination. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of the PRODUCTS shall in no way relieve the SELLER from its obligation to conform to all of the requirements of this PURCHASE ORDER and shall in no way impair BUYER'S right to reject or revoke acceptance of nonconforming PRODUCTS, or to avail itself of any other remedies to which BUYER may be entitled, notwithstanding BUYER'S knowledge of the nonconformity, its substantiality or the ease of its discovery.

**GC-10 WARRANTIES AND GUARANTEES**

- (a) SELLER warrants that the PRODUCTS shall be free from liens and from defects in design, material, workmanship, and title, and shall conform in all respects to the terms of this PURCHASE ORDER and to the applicable drawings issued for manufacture, and shall be new and of the best quality, if no quality is specified. Unless the warranty period is otherwise specified in this PURCHASE ORDER, the following warranty shall apply: if, any time prior to one (1) year from the date of commercial operation of BUYER'S facility (forecast for December 2007),{PN: have discussion with engineering if an option for extended warranty is required, if required incorporate



option for specific requirement) or, with respect to liens, title or latent defects at any time, it appears that the PRODUCTS, or any part thereof, do not conform to these warranties, and BUYER so notifies SELLER within the warranty period, SELLER shall promptly correct such nonconformity to the satisfaction of the BUYER, at SELLER'S sole expense; failing which BUYER may reject or revoke acceptance, and cover by making any reasonable purchase of PRODUCTS in substitution for those rejected and the SELLER will be liable to the BUYER for any additional costs for such substituted PRODUCTS; or BUYER may proceed to correct SELLER'S nonconforming work by the most expeditious means available, and the costs for such correction shall be for SELLER'S account; or BUYER may retain the nonconforming PRODUCTS and an equitable adjustment reducing the order price to reflect the diminished value of such nonconforming PRODUCTS will be made by written revision.

- (b) SELLER'S liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties, including incidental damages, such as disassembly, removal, inspection, re-installation, re-testing, costs of transportation or warehousing. SELLER shall not be liable for consequential damages incurred by BUYER such as loss of profit, loss of use or production, and costs of capital.
- (c) BUYER, OWNER, and the ultimate owner, shall have the right to enforce SELLER'S warranty obligations set forth in this clause.

**GC-11 INFRINGEMENT**

SELLER shall indemnify BUYER and OWNER and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this PURCHASE ORDER, provided SELLER is reasonably notified of such claims and proceedings.

**GC-12 COMPLIANCE**

- (a) SELLER warrants that all PRODUCTS shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the PRODUCTS are subject. SELLER shall execute and deliver to BUYER any documents as may be required to effect or to evidence such compliance. All laws and regulations required to be incorporated in agreements such as this one are hereby incorporated herein by reference.
- (b) SELLER hereby agrees to indemnify, defend and hold BUYER, OWNER and its respective affiliates harmless from and against any and all claims, legal actions, final judgments, reasonable attorneys' fees, civil fines and any other losses which any of them may incur as a result of the sale or delivery to BUYER hereunder of PRODUCTS which do not meet all requirements of such laws and regulations.
- (c) SELLER is to comply with all applicable export or import rules and regulations. When required by the PURCHASE ORDER shipping/delivery terms, SELLER is to obtain any necessary export license in a timely manner to avoid shipment delays. When BUYER is required by the PURCHASE ORDER shipping/delivery terms to obtain any necessary export license, or to meet the import rules and regulations of the destination country, SELLER is to timely provide all necessary compliance assistance to BUYER and its agents. SELLER shall indemnify, defend and hold harmless BUYER from any penalties, suits, liabilities or costs (including attorney fees) proximately caused by SELLER'S failure to comply with applicable export and import rules and regulations or to comply with its export and import obligations set forth in this PURCHASE ORDER.



**GC-13 ASSIGNMENT**

- (a) Any assignment of this PURCHASE ORDER or of any rights hereunder in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of BUYER shall be void. Upon ten (10) days written notice to BUYER, SELLER may assign monies due or to become due under this PURCHASE ORDER, provided that any assignment of monies shall be subject to proper set-off in favor of BUYER and any deductions provided for in this PURCHASE ORDER.
- (b) This PURCHASE ORDER may be assigned by BUYER, in whole or in part, to OWNER or to others upon written notice to SELLER.
- (c) To the extent that BUYER is not the ultimate owner of the PRODUCTS being purchased, all rights, benefits and remedies conferred upon and available to BUYER under this PURCHASE ORDER shall also accrue and be available to, and are for the express benefit of OWNER or the ultimate owner if other than OWNER.

**GC-14 SUSPENSION**

Notwithstanding any other provisions of this PURCHASE ORDER, BUYER may at any time, suspend, or extend the time for, SELLER'S performance, upon ten (10) days prior written notice of such suspension or extension. Thereafter, SELLER shall resume performance as directed by BUYER. In the event of such suspension or extension, SELLER shall be entitled to reimbursement for additional costs, excluding profit, reasonable and necessarily incurred by SELLER in effectuating such suspension or extension period, to the extent that such additional costs are actually incurred, if claimed within thirty (30) days after resumption of performance.

**GC-15 TERMINATION FOR CONVENIENCE**

- (a) BUYER reserves the right to terminate this PURCHASE ORDER, or any part hereof, for its sole convenience. In the event of such termination, SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this PURCHASE ORDER, SELLER shall be paid a percentage of the PURCHASE ORDER price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of BUYER using its standard record keeping system, have resulted from the termination. SELLER shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- (b) BUYER will pay to SELLER as full compensation: (1) all amounts due and previously paid to SELLER for PRODUCTS completed in accordance with this PURCHASE ORDER prior to such notice, and (2) a reasonable profit for costs incurred in the performance of the work terminated; provided, however, that if it appears that SELLER would have sustained a loss on the entire PURCHASE ORDER had it been completed, no profit shall be included.
- (c) The total sum to be paid to SELLER under this clause, shall not exceed the total PURCHASE ORDER price as reduced by the amount of payments otherwise made and as further reduced by the PURCHASE ORDER price of work not terminated, and will not include any consideration for loss of anticipated profits on the terminated work, all claims for which SELLER agrees to waive.

**GC-16 TERMINATION FOR DEFAULT**

- (a) BUYER may terminate this PURCHASE ORDER, or any part hereof, for cause in the event of any default by SELLER, or if SELLER fails to comply with any PURCHASE ORDER terms and



conditions, or fails to provide BUYER, upon request, with adequate assurances of future performance. In the event of termination for default, BUYER shall not be liable to SELLER for any amount for supplies or services not accepted, and SELLER shall be liable to BUYER for any and all rights and remedies provided by law. If it is determined that BUYER improperly terminated this PURCHASE ORDER for default, such termination shall be deemed a termination for convenience.

- (b) In the event BUYER terminates this PURCHASE ORDER, in whole or in part as provided in this clause, BUYER may procure, upon such terms and in such manner as BUYER may deem appropriate, PRODUCTS similar to those so terminated, and SELLER shall be liable to BUYER for any additional costs for such similar PRODUCTS.

**GC-17 DISPUTES**

- (a) Any issue arising out of or related to the interpretation or performance of this PURCHASE ORDER which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause. If for any reason SELLER and BUYER are unable to resolve a request for an adjustment, SELLER or BUYER shall notify the other party in writing that a dispute exists.
- (b) BUYER shall, within thirty (30) calendar days of any notice of dispute, provide a written final determination setting forth the contractual basis for its decision and defining what PURCHASE ORDER adjustments it considers equitable. BUYER may in its sole discretion pay such amounts and/or revise the time for performance of the work in accordance with BUYER'S final determination.
- (c) If BUYER'S final determination is not accepted, SELLER shall notify BUYER in writing and the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process which is mutually acceptable.
- (d) As a condition precedent to consideration of any claim by SELLER in excess of \$100,000, SELLER shall provide a written certification to both BUYER and OWNER which states:
- "I certify that this 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 SELLER believes BUYER or OWNER is liable; and that I am duly authorized to certify this claim on behalf of SELLER."
- (e) SELLER shall proceed diligently with performance of this PURCHASE ORDER as directed by BUYER pending final resolution of any request for adjustment, claim, appeal, or action regarding any dispute.
- (f) If a claim by SELLER is based on alleged actions, inactions or omissions of OWNER and the interests of justice would be served by resolving SELLER'S claim in a single proceeding, BUYER may, in its sole discretion, elect to sponsor SELLER'S claim under the Disputes Clause of BUYER'S Prime Contract and allow SELLER to proceed in BUYER'S name. In the event that BUYER so sponsors a claim, SELLER agrees to enter into a sponsorship agreement under which:
- (1) SELLER waives its rights to reimbursement from BUYER except to the extent that OWNER is liable to BUYER, and
- (2) SELLER shall reimburse BUYER for any costs and expenses associated with sponsorship of the claim.

**GC-18 NON-WAIVER**

Failure of BUYER to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies or to properly notify SELLER in the event of breach, or the acceptance of or payment for any PRODUCTS hereunder, shall not release SELLER of any of the warranties or obligations of this PURCHASE ORDER and shall not be deemed a waiver of any right of BUYER to insist upon strict performance hereof of any of its rights or remedies as to any such PRODUCTS.



## **GC-19 COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS**

SELLER agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

## **GC-20 APPLICABLE LAW**

Irrespective of the place of performance, the provisions in this PURCHASE ORDER shall be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the US Federal Government. To the extent that the federal common law of government contracts is not dispositive, the laws of the state of Colorado shall apply.

The SELLER agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

## **GC-21 REPRESENTATIONS AND CERTIFICATIONS**

Representations and Certifications included in BUYER'S request for proposal and submitted in SELLER'S offer are hereby incorporated by reference into this PURCHASE ORDER.

## **GC-22 SELLER TERMS AND CONDITIONS EXCLUDED**

The only terms and conditions which will apply to this PURCHASE ORDER are the BUYER'S terms and conditions included herein or attached hereto. No terms and conditions of the SELLER included in a price book incorporated herein or any field ticket or invoice will apply to this PURCHASE ORDER.

## **GC-23 UNITED STATES GOVERNMENT FLOW DOWN REQUIREMENTS**

The United States Government clauses applicable to this PURCHASE ORDER are incorporated by reference and included as Appendix FOA-1 to the PURCHASE ORDER Cover Page.

## **GC-24 RECORDS AND AUDIT**

- (a) SELLER shall maintain records and accounts in connection with the performance of this subcontract which will accurately document incurred costs, both direct and indirect, of whatever nature for a period of three (3) years from final payment unless otherwise specified by applicable law. BUYER, GOVERNMENT, or their representatives shall have the right to examine and copy, at all reasonable times and with advance notification, such records and accounts for the purpose of verifying payments or requests for payment when costs are the basis of such payment and to evaluate the reasonableness of proposed subcontract price adjustments and claims.
- (b) For Purchase Orders in excess of \$100,000.00, FAR clause 52.215-2, Audit and Records – Negotiation (JUN 1999) shall also apply.