

GENERAL TERMS AND CONDITIONS OF PURCHASE – NON-COMMERCIAL ITEMS

Supplement 1 – Federal Acquisition Regulation (FAR) Government Contract Provisions

- When the materials or products furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to the BERG General Purchase Order Terms and Conditions, the following provisions shall apply. The effective version of each Federal Acquisition Regulation (hereinafter “FAR”) provision shall be the same version as that which appears in Buyer’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these FAR provisions and the General Terms and Conditions of Purchase, the FAR provisions shall control.

For the acquisition of commercial items under purchase orders placed in support of and charged to a U.S. Government prime contract or subcontract, the only FAR clauses that are required are those annotated with *.

For the definition of a commercial item see FAR 2.101.

- The following clauses set forth in the FAR in effect as of the date of BERG’s prime contract or higher tier subcontract are incorporated herein by reference. In all clauses listed herein, the terms “Government,” “Contracting Officer” and “Contractor” shall be deemed 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 PURCHASE ORDERS:

Gratuities	52.203-3
Covenant Against Contingent Fees	52.203-5
Restrictions on Subcontractor Sales to the Government	52.203-6
Price or Fee Adjustment for Illegal or Improper Activity	52.203-10
Contractor Employer Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	52.203-17
Security Requirements	52.204-2
Personal Identity Verification of Contractor Personnel	52.204-9
Reporting Executive Compensation and First-Tier Subcontract Awards	52.204-10
Basic Safeguarding of Covered Contractor Information Systems	52.204-21
Material Requirements	52.211-5
Defense Priority and Allocation Requirements	52.211-15
Contract Terms Required to Implement Statutes or Executive Orders – Commercial Items	52.212-5*
Integrity of Unit Prices	52.215-14
Utilization of Small Business Concerns	52.219-8*
Notice to Government of Labor Disputes	52.222-1
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Service Contract Labor Standards	52.222-41*
Combating Trafficking in Persons	52.222-50*

Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment –Requirements	52.222-51*
Exemption From Application of the Service Labor Standards to Contracts for Certain Services — Requirements	52.222-53*
Hazardous Material Identification and Material Safety Data	52.223-3
Drug-Free Workplace	52.223-6
Notice of Radioactive Materials (“Government means “Government and Buyer”)	52.223-7
Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	52.223-11
Encouraging Contractor Policies to Ban Text Messaging While Driving	52.223-18
Privacy Act Notification	52.224-1
Privacy Act	52.224-2
Buy-America Act-Supplies	52.225-1
Duty-free Entry	52.225-8
Restrictions on Certain Foreign Purchases	52.225-13
Authorization and Consent — Alternate 1	52.227-1
Refund of Royalties	52.227-9
Filing of Patent Applications — Classified Subject Matter	52.227-10
Patent Rights – Ownership by the Contractor	52.227-11
Patent Rights – Ownership by the Government	52.227-13
Rights in Data — General (Not applicable under Department of Defense procurements)	52.227-14
Commercial Computer Software License	52.227-19
Rights in Data – SBIR Program	52.227-20
Worker’s Compensation Insurance (Defense Base Act)	52.228-3
Workers Compensation and War-Hazard Insurance Overseas	52.228-4
Insurance — Work on a Government Installation	52.228-5
Industrial Resources Developed Under Defense Production Act Title III	52.234-1
Accident Prevention	52.236-13
Changes – Fixed-Price	52.243-1
Competition in Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6*
Government Property	52.245-1
Government Property Installation Operation Service	52.245-2
Inspection of Supplies — Fixed Price	52.246-2
Inspection of Supplies — Cost Reimbursement	52.246-3
Inspection of Services — Fixed Price	52.246-4
Preference for U.S. Flag Air Carriers	52.247-63
Preference for Privately Owned U.S. Flag Commercial Vessels	52.247-64*
Termination for Convenience of the Government (Fixed Price) “Government” shall mean “Buyer.”	52.249-2

B. Orders Over \$10,000 Shall Also Include the Following:

Notification of Employee Rights Under the National Labor Relations Act	52.222-40
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C. Orders Over \$15,000 Shall Also Include the Following:

Walsh-Healy Public Contracts Act	52.222-20
Equal Opportunity for Workers with Disabilities	52.222-36*

D. Orders Over \$25,000 Shall Also Include the Following:

Promoting Excess Food Donations to Nonprofit Organizations	52.226-6*
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E. Orders Over \$150,000 Shall Also Include the Following:

Anti-Kickback Procedures (less paragraph (c)(1))	52.203-7
Limitation on Payments to Influence Certain Federal Transactions	52.203-12
Preventing Personal Conflicts of Interest	52.203-16
Equal Opportunity for Veterans	52.222-35
Employment Reports Veterans	52.222-37
Value Engineering	52.248-1
Limitation on Payments to Influence Certain Federal Transactions	52.203-12

F. Orders Over \$700,000 Shall Also Include the Following:

Small Business Subcontracting Plan	52.219-9
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G. Orders Over \$750,000 and/or the Applicable Cost or Pricing Data Threshold Shall Also Include the Following:

Audit and Records — Sealed Bidding	52.214-26
Price Reduction for Defective Cost or Pricing Data — Modifications — Sealed Bidding	52.214-27
Subcontractor Cost or Pricing Data — Modifications — Sealed Bidding	52.214-28
Audit and Records – Negotiation (applicable to cost type contracts and contracts requiring certified cost or pricing data submission)	52.215-2
Subcontractor Certified Cost or Pricing Data – Modifications	52.215-13
Pension Adjustments and Asset Reversions	52.215-15
Reversion or Adjustment of Plans for Post-Retirement Benefits Other Than Pensions	52.215-18
Notification of Ownership Changes	52.215-19
Limitations on Pass-Through Charges	52.215-23

H. Orders over \$5,500,000.00 Shall Also Include the Following:

Contractor Code of Business Ethics and Conduct	52.203-13
Display of Hotline Poster(s)	52.203-14

I. Unless Otherwise Exempt Also Include the Following:

Protecting Government Interest when Subcontracting with Contractors Debarred, suspended, or Proposed for Debarment	52.209-6
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Price Reduction for Defective Certified Cost or Pricing Data	52.215-10
Price Reduction for Defective Certified Cost or Pricing Data Modifications	52.215-11
Subcontractor Certified Cost or Pricing Data	52.215-12
Subcontractor Certified Cost or Pricing Data Modifications	52.215-13
Requirements for Cost or Pricing Data or Information other than Certified Cost or Pricing Data	52.215-20
Requirements for Cost or Pricing Data or Information other than Certified Cost or Pricing Data — Modifications	52.215-21
Contract Work Hours and Safety Standards – Overtime Compensation	52.222-4
Subcontracts — Labor Standards	52.222-11
Child Labor — Cooperation with Authorities and Remedies	52.222-19
Pre-award On-site Equal Opportunity Compliance Evaluation	52.222-24
Buy American Act — Free Trade Agreements-Israeli Trade Act	52.225-3
Trade Agreements	52.225-5
Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States	52.225-19
Patent Rights — Ownership by the Government	52.227-13
Cost Accounting Standards — Educational Institution	52.230-5
Earned Value Management System	52.234-4
Change Order Accounting	52.243-6
Notification of Changes	52.243-7

J. Applicable to Cost Reimbursement, Time & Material or Labor Hour Purchase Orders:

Facilities Capital Cost of Money	52.215-16
Allowable Cost and Payment (cost reimbursement) Seller agrees to execute assignment documents in order to comply with subsection (h)	52.216-7
Fixed Fee — applicable to cost plus fixed fee Purchase Orders	52.216-8
Incentive Fee — applicable to cost plus incentive fee Purchase Orders	52.216-10
Cost Contract — No Fee — applicable to cost no fee Purchase Orders	52.216-11
Cost Sharing Contract — No Fee — applicable to cost sharing no fee Purchase Orders	52.216-12
Payment for Overtime Premiums — insert “0%” in paragraph (a)	52.222-2
Insurance — Liability to Third Persons	52.228-7
Payments under Time and Materials and Labor Hour Contracts, in which “schedule” means this Purchase Order, “voucher(s)” means invoice(s), “Government” means BERG and “Contracting Officer” means Buyer’s Purchasing Representative.	52.232-7
Limitation of Cost (if fully funded)	52.232-20
Limitation of Funds (if incrementally funded)	52.232-22
Notice of Intent to Disallow Costs	52.242-1
Penalties for Unallowable Costs	52.242-3
Changes — Cost Reimbursement	52.243-2
Changes — Time and Material or Labor Hours	52.243-3
Subcontracts (paragraphs (h) and (i) only apply)	52.244-2

Inspection of Services (Cost Reimbursement) - “Contracting Officer” means	
“Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government” first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.	52.246-5
Inspection of Time and Material and Labor Hour - “Contracting Officer” means “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government” first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.	52.246-6
Termination (Cost Reimbursement) — “Government” means “Buyer” and	
“Contracting Officer” means “Buyer’s Purchasing Representative”. Alternative IV is applicable to time and material or labor hour Purchase Orders only.	52.249-6 Alt IV
Excusable Delays	52.249-14

3. CERTIFICATIONS

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

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$150,000)	52.203-11
Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters (over \$150,000)	52.209-5
Previous Contracts and Compliance Reports (over \$150,000)	52.222-22

4. ADDITIONAL CLAUSES (FOR OTHER THAN COMMERCIAL CONTRACTS):

A. Cost Accounting Standards (Applicable unless otherwise exempt)

Cost Accounting Standards	52.230-2
Disclosure and Consistency of Cost Accounting Standards	52.230-3
Administration of Cost Accounting Standards	52.230-6

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 the 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 that is legally privileged and confidential to 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 subject 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 or 52.230-6.

Paragraph (b) is deleted in each of the foregoing clauses.

B. Truth in Negotiations (Cost and Pricing Data)

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of any appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing data.

1. Indemnification:

If any cost or price (including profit or fee) negotiated in connection with the prime contract between the Government and 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 Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify Buyer in the amount of said reduction.

The phrase “cost or pricing data” as used herein shall be deemed to include any such data related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of or in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate. If any reduction of 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 Buyer at the time such overpayment is repaid:

- a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date 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
- b. 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.

2. 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 expected to exceed threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that such data, as defined in Federal Acquisition Regulation 2.101, 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.

GENERAL TERMS AND CONDITIONS OF PURCHASE

Supplement 2 – Department of Defense FAR Supplement (DFARS) Government

Contract Provisions

- When the materials or products furnished are for use in connection with a U.S. Government Department of Defense prime contract or subcontract, in addition to the BERG General Purchase Order Terms and Conditions and the Supplement 1 FAR provisions, the following provisions shall apply. The effective version of each Department of Defense FAR Supplement (hereinafter “DFARS”) provision shall be the same version as that which appears in Buyer’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these DFARS provisions, or the Supplement 1 FAR provisions, and the General Purchase Order Terms and Conditions, the DFARS provisions shall control.

For the acquisition of commercial items under purchase orders placed in support of and charged to a DOD prime contract or subcontract, the only DFARS clauses that are required are those annotated with *.

For the definition of a commercial item, see FAR 2.101.

- The following clauses set forth in the DFARS in effect as of the date of BERG’S prime contract or higher tier subcontract are incorporated herein by reference. In all clauses listed herein, the terms “Government,” “Contracting Officer” and “Contractor” shall be deemed 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. The Seller, by signing its offer, hereby certifies compliance with the following clauses and is, therefore eligible for award.

A. APPLICABLE TO ALL PURCHASE ORDERS: DFARS

Requirement to Inform Employees of Whistleblower Rights	252.203-7002
Disclosure of Information	252.204-7000
Limitations on the Use of Disclosure of Third-Party Contractor Reported Cyber Incident Information	
Safeguarding Covered Defense Information and Cyber Incident Reporting	252.204-7012
Intent to Furnish Precious Metals as Government-Furnished Material	252.208-7000
Item Unique Identification and Valuation	252.211-7003
Pricing of Adjustments	252.215-7000
Restrictions on Employment of Personnel	252.222-7000
Hazard Warning Labels	252.223-7001
Drug-Free WorkForce	252.223-7004
Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Alternate)	252.223-7006
Prohibition of Hexavalent Chromium	252.223-7008
Buy American Act – Balance of Payments Certificate	252.225-7000
Buy America Act and Balance of Payments Program	252.225-7001
Qualifying Country Sources as Subcontractors	252.225-7002
Quarterly Reporting of Actual Contract Performance Outside the United States	252.225-7006
Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies	252.225-7007
Restriction on Acquisition of Certain Articles Containing Specialty Metals	252.225-7009*
Restriction on Acquisition of Super Computers	252.225-7011

Preference for Certain Domestic Commodities	252.225-7012*
Duty-Free Entry	252.225-7013
Restriction on Acquisition of Hand or Measuring Tools	252.225-7015
Restriction of Acquisition of Ball and Roller Bearings	252.225-7016
Restriction on Acquisition of Foreign Anchor and Mooring Chain	252.225-7019
Trade Agreements Certificate	252.225-7020
Trade Agreements	252.227-7021
Restriction on Acquisition of Forgings	252.225-7025
Restriction on Contingent Fees for Foreign Military Sales	252.225-7027
Exclusionary Policies and Practices of Foreign Governments	252.225-7028
Restriction of Acquisition of Carbon, Alloy and Armor Steel Plate	252.225-7030
Secondary Arab Boycott of Israel	252.225-7031
Buy American Act – Free Trade Agreements- Balance of Payments Program	252.225-7036
Restriction on Acquisition of Air Circuit Breakers	252.225-7038
Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States	252.225-7040
Anti-terrorism/Force Protection for Defense Contractors Outside the United States	252.225-7043
Export Controlled Items	252.225-7048
Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	252.226-7001
Rights in Technical Data – Noncommercial items	252.227-7013
Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7014
Technical Data – Commercial Items	252.227-7015
Rights in Bid or Proposal Information (No substitutions for “Government” or “Contracting Officer” are made)	252.227-7016
Identification and Assertion of Use, Release or Disclosure Restrictions	252.227-7017
Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program	252.227-7018
Validation of Asserted Restrictions – Computer Software	252.227-7019
Rights in Special Works	252.227-7020
Rights in Data – Existing Works	252.227-7021
Limitation on the Use or Disclosure of Government-Furnished Information	
Marked with Restrictive Legends (No substitution is made for “Government”)	252.227-7025
Deferred Delivery of Technical Data or Computer Software	252.227-7026
Deferred Ordering of Technical Data or Computer Software	252.227-7027
Technical Data or Computer Software Previously Delivered to the Government	252.227-7028
Technical Data – Withholding of Payment	252.227-7030
Rights In Shop Drawings	252.227-7033
Validation of Restrictive Markings on Technical Data	252.227-7037
Patent Rights Ownership by Contractor (Large Business)	252.227-7038
Patents – Reporting of Subject Inventions	252.227-7039

Status of Contractor as Direct Contractor (Spain)	252.229-7004
Reporting of Foreign Taxes – US Assistance	252.229-7011
Supplemental Cost Principles	252.231-7000
Frequency Authorization	252.235-7003

Modification Proposals – Price Breakdown	252.236-7000
Cloud Computing Services	252.239-7010
Telecommunications Security Equipment, Devices, Techniques and Services	252.239-7016
Pricing of Contract Modifications	252.243-7001
Subcontracts for Commercial Items and Commercial Components	252.244-7000
Warranty of Data	252.246-7001
Notification of Potential Safety Issues	252.246-7003*
Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer	252.247-7003*
Contractor Counterfeit Electronic Part Detection and Avoidance System	252.246-7007
Representation of Extent of Transportation by Sea	252.247-7022
Transportation of Supplies by Sea	252.247-7023
Notification of Transportation of Supplies by Sea	252.247-7024*

B. Orders Over \$100,000 Shall Also Include the Following:

Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies	252.203-7001
Transportation of Supplies by Sea	252.247-7023*
Notification of Anticipated Contract Terminations or Reductions	252.249-7002

C. Orders Over \$650,000 Shall Also Include the Following:

Small, Business Subcontracting Plan (DOD Contracts)	252.219-7003
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D. Orders Over \$700,000 Shall Also Include the Following:

Reporting of Contract Performance Outside the United States and Canada – Submission after Award (first tier subcontractors only)	252.225-7004
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E. Orders Over \$1,000,000 Shall Also Include the Following:

Acquisition Streamlining	252.211-7000
Waiver of United Kingdom Levies	252.225-7033

F. Orders Performed Outside the United States

Contractor Personnel Authorized to Accompany U.S. Forces Deployed Outside the United States	252.225-7040
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