

## GENERAL PROVISIONS

(For use with Nonappropriated Fund Orders and Contracts)

**1. DEFINITIONS (1975 MAY) - As used throughout this contract, the following terms and abbreviation have the meanings set forth below:**

- a. The term "contract" means this agreement or order and any modification hereto.
- b. The abbreviation "NAFI" means Nonappropriated fund Instrumentality of the United States Government.
- c. The term "Contracting Officer" means the person executing or responsible for administering this contract on behalf of the NAFI which is a party hereto, or his or her successor or successors.
- d. The term "Contractor" means the party responsible for providing supplies and or services at a certain price or rate to the NAFI under this contract.

**2. DISPUTES (1979 DEC)**

a. Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall state his decision in writing and mail or otherwise furnish a copy of it to the Contractor. Within 90 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Armed Services Board of Contract Appeals, and the decision of the Board shall be final and conclusive. The contractor shall be afforded an opportunity to be heard and to offer evidence in support of any appeal under this clause. Pending final decision on such a dispute, however, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer unless directed to do otherwise by the Contracting Officer.

b. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph a above, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**3. LAW GOVERNING CONTRACTS (1970 JUL) - In any dispute arising out of this contract, the decision of which requires consideration of law questions, the rights and obligations of the parties shall be interpreted and determined in accordance with the substantive laws of the United States of America.**

**4. LEGAL STATUS (1973 JUL) - The NAFI is an integral part of the Department of Defense and is an instrumentality of the United States Government. Therefore, NAFI contracts are United States Government contracts; however, they do not obligate appropriated funds of the United States.**

**5. EXAMINATION OF RECORDS (1979 DEC)**

a. This clause is applicable if the amount of this contract exceeds \$10,000 and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the term of the contract and until the expiration of three years after the final payment under the contract.

b. The Contractor agrees to include the clause in "a" above in all subcontracts hereunder which exceed \$10,000.

**6. ASSIGNMENT (1987 SEP) - No assignment by the Contractor, assigning its rights or delegating its obligations under this contract, will be effective and binding on the NAFI until the written terms of the assignment have been approved in writing by the Contracting Officer.**

**7. GRATUITIES (1984 JUL)**

a. The NAFI may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing, by the Secretary of the Air Force or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the Government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

b. In the event this contract is terminated as provided in paragraph a hereof, the NAFI shall be entitled (i) to pursue the same remedies against the contractor as it could pursue in the event of a breach of contract by the contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Air Force or his or her duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**8. TERMINATION FOR CONVENIENCE (1984 FEB) - The contracting officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the contractor shall be compensated in accordance with FAR Subparagraphs 49.1 and 49.2 in effect on the date of this contract. To the extent that this contract is for services and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination, providing there are no contractor claims covering nonrecurring costs for capital investment. If there are any such contractor claims, they shall be settled in accordance with FAR Subparts 49.1 and 49.2.**

## 9. TERMINATION FOR DEFAULT (1987)

(a) (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

- (i) Deliver the supplies or perform the service within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below).

(2) The NAFI's right to terminate this contract under subdivisions (a)(i) (i) and (ii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.

(b) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor must continue the work not terminated.

(c) The Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. Defaults by subcontractors at any tier for any reason do not constitute causes beyond the control and without the fault or negligence of the Contractor.

(d) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the NAFI, as directed by the Contracting Officer, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

(e) The NAFI shall pay the contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Dispute Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

(f) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(9) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

**10. NON.WAIVER OF DEFAULTS (1987 SEP)** - Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

**11. INSPECTION AND ACCEPTANCE (1989 SEP)** - Inspection and acceptance will be at destination unless otherwise provided in this contract. Notwithstanding the requirements for any NAFI inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the NAFI, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies provided under the contract conform to the drawings, specifications, and contract requirements listed herein, including, if applicable, the technical requirements for the manufacturer's part numbers specified herein. For Prompt Payment Act purposes and unless otherwise provided in this contract, acceptance will be assumed to have been made for goods delivered and services performed if the NAFI does not accept or reject, in writing, within seven days from the date of delivery of goods or performance of services. The NAFI may still reject unacceptable goods or services after the seven-day time allowed. Payment and any liability under the Prompt Payment Act is conditioned on receipt by the NAFI of a proper invoice.

## 12. INVOICES (1989 SEP)

a. An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice should include (and in order to support the payment of interest penalties, must include) the following:

(i) Invoice date;

(ii) Name of contractor;

(iii) Contract number (including order number, if any), contract description of supplies or services (including contract line item number), quantity, contract unit of measure and unit price, and extended total;

(iv) Shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bills of lading)

(v) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(vi) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(vii) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in duplicate (one copy shall be marked "Original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment act (Public Law 100496):

(i) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices, and acceptance of the supplies delivered or services rendered has occurred.

(ii) Payment shall be considered made on the date on which a check for such payment is dated.

(iii) Payment terms (e.g. "Net 20") offered by the contractor will not be deemed a "Required Payment Date"

**13. PAYMENTS (1989 SEP)** Unless otherwise specified, payment will be made on partial deliveries accepted by the NAFI. Payments and penalties for late payments are subject to the requirements established by the Prompt Payment Act, as amended, and as implemented for NAFIs. If the NAFI makes payment but such payment fails to include a prompt payment penalty due the Contractor within ten days from when the contract payment is made, penalty amounts will not be paid unless the Contractor makes a written request within forty days after the date of payment.

**14. DISCOUNTS FOR PROMPT PAYMENT (1987 SEP)**

a. Discounts for prompt payments will not be considered in the evaluation of offers and quotations. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer or quote. As an alternative to offering a prompt payment discount in conjunction with the offer or quote, offerors or quoters awarded contracts may include prompt payment discounts on individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation (POE), or consolidated containerization point (CCP), if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the NAFI, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

**15. MODIFICATIONS (1975 JAN)** - No agreement or understanding to modify this contract will be binding upon the NAFI unless made in writing and signed by a contracting officer from the office that issued the contract or its successor.

**16. HOLD AND SAVE HARMLESS (1973 JUL)** - The Contractor shall indemnify, save harmless, and defend the NAFI, its outlets and customers from any liability, claimed or established for violation or infringement of any patent, copyright, or trademark right asserted by any third party with respect to goods hereby ordered or any part thereof. The Contractor further agrees to hold the NAFI harmless from all claims or judgments for damages resulting from the use of products listed in this contract, except for such claims or damages caused by, or resulting from the negligence of NAFI customers, employees, agents or representatives. Also, the Contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits, claims, charges, and expenses which arise out of acts or omissions of Contractor, its agents, representatives, or employees.

**17. ADVERTISEMENTS (1973 JUL)** - The Contractor agrees that none of its nor its agent's advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, etc., shall state, infer or imply that the Contractor's products or services are approved, promoted or indorsed by the NAFI. Any advertisement, including cents-off coupons, which refer to a NAFI will contain a statement that the advertisement is neither paid for nor sponsored in whole or in part by the particular activity.

**18. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS (JUN 1985)** - The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal department or agency, or upon receipt of a notice of proposed debarment from another DOD Agency, during the performance of this contract.

**19. TAXES (1987 SEP)**

a. Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf; or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

b. If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

**20. COMMERCIAL WARRANTY (1978 DEC)** - The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract. The printed terms and conditions of such warranty will be provided to the NAFI with the delivery of any supplies covered.

**21. VARIATION IN QUANTITY (1973 JUL)** - No variation in quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer in writing as a modification to this contract.

**22. PROOF OF SHIPMENT (1984 JAN)** - (Applicable to shipments outside the United States through the Defense Transportation System (DTS) and Parcel Post shipments to overseas destinations.)

a. Notwithstanding any clause of this contract to the contrary, payment will be made for items not yet received upon receipt of an invoice accompanied by an appropriate proof of shipment. If shipment is made by insured parcel post, the Contractor must furnish a copy of the Insured Mail Receipt issued by the US Postal service. Otherwise, a stamped copy of Certificate of Mailing issued by the US Postal Service must be furnished. If shipment is made by a common carrier (rail, air or motor freight), the Contractor must furnish a signed copy of the shipping document on which items are receipted for by the common carrier. A signed receipt by a Government representative at the delivery point (CCP or POE) is also acceptable evidence of proof of shipment.

b. Forwarding a proof of shipment and an invoice for payment by the Contractor shall be construed as a certification by the Contractor that the items shipped conform to the specifications.

c. Notwithstanding any provisions of this clause or any payment made pursuant to the terms of this clause prior to receipt of the items contracted for, the NAFI retains the right of inspect upon receipt and the right to reject nonconforming items. The liability of the Contractor with respect to items for which payments have been made will, after inspection by the NAFI or after the expiration of a reasonable time following delivery to the NAFI within which inspection may be made, whichever occurs first, be limited to (i) exceptions taken at the time of inspecting, and (ii) latent defects, fraud, or such gross mistakes as amount to fraud.

23. ACCEPTANCE (1989 SEP) - Acceptance of the supplies or services or a written notice of rejection must be accomplished on or before the 7th working day following delivery of the supplies or services, unless otherwise specified in this contract.

#### LIST OF CLAUSES INCORPORATED BY REFERENCE

The provisions of the following clauses set forth in the Federal Acquisition Regulation (FAR) or DOD FAR Supplement (DEARS) are hereby incorporated into this order or contract by reference with the same force and effect as though herein set forth in full. As used in the following clauses, the term "Government" is deleted and the abbreviation "NAFI" is substituted in lieu thereof. The date of each clause shall be the current date set forth in the FAR or DFARS on the issuance date of this order or contract. Clauses made inapplicable by the reference or by the kind of order or contract (e.g., orders or contracts for services instead of supplies) are self-deleting. The complete text of any clause incorporated in this order or contract by reference may be obtained from the Contracting Officer.

CLAUSE NO.	REFERENCE	CLAUSE TITLE
24.	52.203-1	Officials Not to Benefit
25.	52.203-5	Covenant Against Contingent Fees
26.	52.203-7	Anti-Kickback Procedures
27.	52.203-7002	Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees
28.	52.243-7001	Pricing of Adjustments
29.	52.222-3	Convict Labor
30.	52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (Applies to construction contracts over \$2,000 and all
31.	52.222-20	Walsh-Healy Public Contracts Act (Applicable to contracts for manufacture or furnishing of materials, supplies, articles or equipment in a contract over \$10,000.)
32.	52.222-26	Equal Opportunity (Applicable to contracts over \$10,000.)
33.	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (Applicable to contracts of \$10,000 or more.)
33a	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era. (Whenever Clause 33 applies.)
34.	52.222-36	Affirmative Action for Handicapped Workers (Applicable to contracts over \$2,500.)
35.	52.223-2	Clean Air and Water (Applicable to contracts over \$100,000.)
36.	52.225-7001	Buy American Act and Balance of Payments Program
37.	52.225-7002	Qualifying Country Sources as Subcontractors
38.	52.225.7006	Buy American Act, Trade Agreements Act, and the Balance of Payments Program
39.	52.225-11	Certain Communist Areas
40.	52.243-1	Changes- Fixed Price
41.	52.246-16	Responsibility for Supplies
42.	52.247 52	Clearance and Documentation Requirements Shipments to DOD Air or Water Terminal Transhipment Points
43.	52.203-10	Remedies for Illegal or Improper Activities

#### ADDITIONAL GENERAL PROVISIONS FOR SERVICES

44.	52.222.40	Services Contract Act of 1965 - Contracts of \$2,500 or Less
45.	52.222.41	Service Contract Act of 1965
46.	52.243-1	Changes - Fixed Price (Alternate I or 11, as appropriate)
47.	52.246-4	Inspection of Services - Fixed Price