

# **TERMS AND CONDITIONS FOR PURCHASES UNDER A DEPARTMENT OF DEFENSE SUBCONTRACT**

Term-Gov Rev1

## **1. Definitions.**

- (a) Buyer shall mean Dechert Dynamics Corp.
- (b) Seller shall mean the entity from whom Dechert Dynamics Corp. is making a purchase pursuant to this purchase order.
- (c) All other capitalized terms shall have the meaning set forth in either the Federal Acquisition Regulations (48 CFR Chapter 1), the Department of Defense Acquisition Regulation Supplement (48 CFR Chapter 2), or the relevant statute or regulation as the context provides.

## **2. References to Government Terms and Conditions.**

These terms and conditions contain references to contract clauses set forth in the Federal Acquisition Regulations (FAR) (48 CFR Chapter 1) and the Department of Defense Acquisition Regulation Supplement (DFARS) (48 CFR Chapter 2). The clauses shall be considered as being set forth in full herein. The FAR and DFARS are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

When costs are a factor in any determination of a purchase order price, or price adjustment, such costs shall be in accordance with the provisions of FAR Part 31 and DFARS Part 231 in effect on the date of this purchase order.

## **3. Patents.** FAR 52.227-3 "Patent Indemnity" (April 1984) applies to this order.

FAR 52.227-1 "Authorization and Consent" (December 2007) applies to this order.

FAR 52.227-2 "Notice and Assistance Regarding Patent and Copyright Infringement" (December 2007) applies to this order.

If the product or any part thereof is held in any suit or proceeding to constitute infringement or its use is enjoined, Seller shall at its expense, in a timely manner: (1) procure for the Buyer and its customers the right to continue using the product or part thereof and (2) replace it with a substantially equivalent non-infringing product, or (3) modify it so it becomes non-infringing, but is substantially, functionally equivalent.

## **4. Compliance with Laws and Regulations.** Seller in

the performance of this order shall comply with all federal, state, and local laws, rules and regulations applicable to or incorporated by reference in this order, including but not limited to, all applicable environmental protection laws, rules and regulations, the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) and the Occupational Safety & Health Act of 1970, as amended ("OSHA"), the International Traffic in Arms Regulations as amended, and all rules and regulations thereunder. Seller is a federal contractor which complied fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60; 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741;

38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and/or 60-300; and Executive Order 13201 and the applicable regulations contained in 29 C.F.R. Part 470.

Each invoice submitted against this order shall constitute a representation and warranty by Seller that the goods, supply and/or services were delivered in compliance with all such legal requirements and if Buyer is subjected to any liability as the result of Seller's or its subcontractor's failure to comply with the requirements or this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

Seller agrees to furnish information within seven (7) days of Buyer's request regarding payment, offer, or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. 130) with respect to any sale by the Buyer for which a license or approval is required from the Office of Defense Trade Controls, Department of State or any sale pursuant to a contract with the Department or Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).

## **5. Subcontracting and Equal Employment**

**Opportunity.** Seller shall not subcontract any portion of the work without prior written approval of Buyer. Seller shall comply with all applicable provisions of Executive Order 11246 of September 24, 1965, as amended, the terms of which are incorporated herein by reference. It is the policy of Buyer to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action shall be taken by Seller, with respect to itself and any of its subcontractors, vendors, and suppliers to ensure compliance with such laws.

All federal, state, and local equal opportunity and affirmative action requirements with regard to race, sex, religion, national origin, handicap, and Vietnam Veterans or disabled veteran status, including such federal requirements found 41 C.F.R. 60-1, 60-1.1, and 60-1.5 are herein incorporated by reference.

## **6. Release of Information.**

(a) **General Requirements.** The Seller shall not release to anyone outside the Seller's organization any unclassified information, regardless of medium (e.g., film, tape, document, display, brochure, website, etc.), regardless of purpose (e.g., purchase order performance, advertising, promotion, etc.) pertaining to any part of this purchase order or any program related to this purchase order unless: (1) the Buyer has given prior written approval, or (2) the information is otherwise in the public domain before the date of release.

(b) **Request Format and Timing.** Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The

Seller shall submit its request to Buyer at least 60 days before the proposed date for release.

(c) Exceptional/Approval. In accordance with paragraph (a)(1) above, approval is granted to Seller so that, if necessary, it may disclose unclassified information, including sensitive unclassified information, to entities under subcontract either actually or prospectively (including subtier orders), regardless of tier, under the purchase order for the provision of Naval Nuclear Propulsion Program (NNPP) supplies or services, entities of the Federal Government and other entities performing NNPP work. This authority does not authorize Seller to release any information under or related to this purchase order to any entity not specified above, or not specifically affiliated with Seller under the subject purchase order through a contractual or prospective contractual relationship.

Moreover, approval for release or information to subtiers and other entities with which Seller has a contractual or prospective contractual relationship does not extend to those entities who, regardless of relationship, do not have in place proper safeguards and procedures for receipt and handling of the sensitive information.

The requirements of Paragraphs (a) and (b) above remain in effect as set forth and Seller must receive approval for release to any entity not covered by the authority set forth in this Paragraph (c).

(d) Litigation. Should any information described in (a) above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be properly brought to the attention of the Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should information other than Paragraph (a)(2) information, be released to such authority without prior notification to and agreement of the Buyer.

(e) Survivability. Seller agrees that the requirements of this Section 5, to include Seller's obligation to obtain Buyer's approval of any release other than a Paragraph (a)(2) or (c) release, shall survive the purchase order and that Seller shall not for a period of twenty years subsequent to the issuance of the purchase order either directly or indirectly issue any such release without the requisite approval of Buyer, its successors, or assigns.

(f) Mandatory Passdown. Seller shall include all provisions of this Section entitled Release of Information, including this sentence, in all subtier orders under this purchase order. Subtier requests of authorization to release information shall be submitted through Seller to Buyer.

7. **Toxic Substance and EPA Requirements**. Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and

published by the Administrator or the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substance Control Act (Public Law 94-469), as may be amended.

Seller shall submit to Buyer, Material Safety Data Sheets prepared in accordance with OSHA Hazardous Communication Standard, 29 CFR 1910.1200, as required.

Seller shall be responsible for all chemical substances or mixtures, which it or its subcontractors or suppliers of any tier bring upon premises of Buyer or Buyer's customer. Seller shall be responsible for removing and disposing all such substances and/or mixtures, containers, materials and residue from their use, in accordance with all applicable federal, state, and/or local statutes, laws, regulations, rules, orders, and ordinances.

Seller warrants that all of the equipment and material furnished hereunder have been completely and accurately labeled pursuant to the requirements of 40 C.F.R. Part 82, "Protection of Stratospheric Ozone" or that such equipment and materials do not require such labeling.

8. **Cost or Pricing Data**. If the Seller is required to furnish a Certificate of Current Cost or Pricing Data substantially in conformance with the form prescribed in FAR Subsection 15.406-2 in connection with the pricing of this purchase order or any amendment to, change thereto or modification thereof, the following FAR clauses are incorporated herein by reference: Audit and Records – Negotiation, FAR 52.215-2; Price Reduction for Defective Cost or Pricing Data, FAR 52.215-10; Price Reduction for Defective Cost or Pricing Data - Modifications FAR 52.215-11; Subcontractor Cost or Pricing Data FAR 52.215-12; Subcontractor Cost or Pricing Data - Modifications FAR 52.215-21.

In addition, upon request by Buyer's personnel, Seller agrees to disclose complete, accurate and Current Cost or Pricing Data to Buyer in support and prior to the conclusion of Buyer's negotiations with the U.S. Government if this purchase order is issued under a U.S. Government prime contract and the Truth In Negotiations Act requires disclosure of Seller's Cost or Pricing Data prior to the agreement on the purchase order without regard to the date on which Seller and Buyer enter into this purchase order.

Seller agrees to furnish and require its lower-tier subcontractors to furnish cost or pricing data as delineated in Table 15-2 of FAR 15.408, or other form prescribed by Buyer, and a Certificate of Current Cost or Pricing Data substantially in conformance with the form set forth in FAR Subsection 15.406-2 in connection with the pricing or any change to or modification of this order if required by Buyer. Seller agrees to indemnify and hold Buyer harmless from and against any loss or damage Buyer may incur which arises out of or results from any failure of Seller or Seller's actual or prospective subcontractors or vendors, at whatever level, to comply with any or the foregoing provisions.

9. **Cost Accounting Standards.** If there are no exemptions, and cost accounting standards are applicable to the supplier, the following provisions apply:

(a) Seller shall comply with the provisions of FAR clause 52.230-2, Cost Accounting Standards, (excluding subparagraph (b) thereof), hereby incorporated herein by reference or, if the face of this purchase order so indicates, FAR clause 52.230-3, Disclosure and Consistency of Cost Accounting Practices, (excluding subparagraph (b) thereof), hereby incorporated herein by reference, provided, however, that in lieu of submission of a Disclosure Statement to Buyer as may be required by either of said clauses, Seller may, as appropriate, submit a Certificate of Previously Submitted Disclosure Statement or a Certificate of Submittal of Disclosure Statement Containing Privileged Information as contained in Buyer's form approved for that purpose.

(b) Seller shall comply with the provisions of FAR clause 52.230-6, Administration of Cost Accounting Standards, hereby incorporated herein by reference.

(c) As used herein and in the clauses incorporated herein by reference, the Cost Accounting Standards applicable shall be those in effect on the date of this order or the date of the final agreement on price as shown on Seller's Certificate of Current Cost or Pricing Data, if applicable.

(d) In the event the Government Contracting Officer of the prime contract under which this purchase order is issued determines that the Government incurred any increased costs under the prime contract because Seller or a lower-tier subcontractor failed to comply with an applicable Cost Accounting Standard, rule or regulation of the Cost Accounting Standards Board or any other provision of this Cost Accounting Standards clause, and, as a result, the prime contract price or the price of this order is reduced pursuant to the Cost Accounting Standards clause in the prime contract, or, where the prime contract is on other than a firm fixed price basis, if the price of this order is disallowed in whole or in part, then the price of this order shall be appropriately reduced and this order shall be modified in writing as may be necessary to reflect such reduction.

(e) Seller agrees to indemnify and save Buyer harmless from and against any loss, damage, liability, or expenses caused by any failure of Seller or Seller's lower-tier subcontractors or vendors to comply with any or the foregoing provisions.

10. **Clean Air and Water.** Seller shall comply with the provisions of the Clean Air Act if value of this order is \$100,000 or more, or is of indefinite quantity and expected to be \$100,000 or more, or if Seller's facility to be used in connection with this order has been the subject of a

conviction under the Clean Air Act (42 U.S.C. § 7413(c)(1)) or Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by the EPA, or this purchase order is not otherwise exempt. Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (including reasonable attorneys' fees), or liability resulting from any failure of the Seller or this lower tier subcontractors to comply therewith.

11. **FAR and DFARS Clauses Applicable to This Order.** The following referenced FAR and DFARS clauses apply to this order. Revisions current at the time of contract award shall apply. These clauses shall be considered as if set forth in their entirety:

(a) For all purchase orders:

- FAR 52.211-5 – Material Requirements
- FAR 52.211-15 – Defense Priority and Allocation Requirements
- FAR 52.222-1 – Notice to Government of Labor Disputes
- FAR 52.222-26 – Equal Opportunity
- FAR 52.222-50 – Combating Trafficking in Persons
- FAR 52.222-54 – Employment Eligibility
- Verification
- FAR 52.223-11 – Ozone Depleting Substances
- FAR 52.234-1 – Industrial Resources Developed Under Defense Production Act, Title III
- FAR 52.242-15 – Stop Work Order
- FAR 52.244-6 – Subcontracts for Commercial
- DFAR 252.203-7002 – Requirement to Inform Employees of Whistleblower Rights
- DFAR 252.223-7008 – Prohibition of Hexavalent Chromium
- DFAR 252.225-7009 – Restriction of Acquisition of Certain Articles Containing Specialty Metals
- DFAR 252.225-7013 - Duty-Free Entry
- DFAR 252.244-7000 - Subcontracts for Commercial Items and Commercial Components (DOD) Contracts
- DFAR 252.245-7001 – Tagging, Labeling and Marking of Government Furnished Property
- DFAR 252.225-700 I - Buy American Act and Balance of Payment Programs
- DFAR 252.225-7002 – Qualifying Country Sources as Subcontractors
- DFAR 252.225-7016 - Restrictions on Acquisition of Ball and
- Roller Bearings
- FAR 52.223-3 - Hazardous Material Identification and Material
- Safety Data
- FAR 52.225-13 - Restrictions on Certain Foreign Purchases

DFAR 252.204-7012 - Safeguarding Covered  
Defense Information  
and Cyber Incident Reporting  
DFAR 252.204-7019 - Notice of NIST SP 800-171  
DoD Assessment Requirements  
DFAR 252.204-7020 – NIST SP 800 DoD  
Assessment Requirements

(b) For purchase orders in excess or \$10,000,  
the following additional clauses apply:  
FAR 52.222-26 - Equal Opportunity  
FAR 52.222-19 - Child Labor - Cooperation with  
Authorities and  
Remedies  
FAR 52.223-18 - Encouraging Contractor Policies to  
Ban Text  
Messaging While Driving

(c) For purchase orders in excess of \$15,000,  
the following additional clauses apply:  
FAR 52.222-36 - Equal Opportunities for Workers  
with Disabilities  
FAR 52.222-20 - Contracts for Materials, Supplies,  
Articles and Equipment Exceeding \$15,000.

(d) For purchase orders in excess of \$150,000,  
the following additional clauses apply:  
FAR 52.222-35 – Equal Opportunity for Veterans  
FAR 52.222-37 - Employment Reports on Veterans

FAR 52.203-11- Certification and Disclosure  
Regarding Payments to Influence Certain Federal Transactions

FAR 52.203-12 - Limitation on Payments to  
Influence Certain Federal Transactions

FAR 52.222-4 - Contract Work Hours & Safety  
Standards Act – Overtime  
Compensation

(e) For purchase orders in excess of the  
simplified acquisition threshold, the following additional  
clauses apply:

FAR 52.203-3 - Gratuities  
FAR 52.219-8 - Utilization of Small Business  
Concerns  
FAR 52.244-5 - Competition in Subcontracting  
FAR 52.203-6 - Restriction on Subcontractor Sales to  
the Government

FAR 52.203-7 - Anti-Kickback Procedures, less  
paragraph (c) (1)  
FAR 52.227-2 - Notice and Assistance Regarding  
Patent and Copyright Infringement  
DFAR 252.247-7023 -Transportation of Supplies by  
Sea

FAR 52.204-4 - Printed or Copied Double-Sided on  
Recycled Paper  
FAR 52.215-14 - Integrity of Unit Prices

(f) For purchase orders in excess of \$700,000,  
the following additional clauses apply:  
FAR 52.219-9 - Small Business Subcontracting Plan  
DFAR 252.219 -7003 - Small Business  
Subcontracting Plan (DOD Contracts)  
FAR 52.219-16 - Liquid Damages - Subcontracting  
Plan

(g) For purchase orders in excess of \$2,000,000,  
the following additional clauses apply:  
FAR 52.215-21 - Requirements for Cost or Pricing  
Data or Information Other Than Cost or Pricing Data –  
Modifications  
FAR 52.230-2 - Cost Accounting Standards  
FAR 52.230-3 - Disclosure and Consistency of Cost  
Accounting Practices  
FAR 52.230-6 - Administration of Cost Accounting  
Standards

(h) If this purchase order fails to meet any of the  
exceptions to the requirement for the submission of cost or  
pricing data appearing in FAR 15.408 and if the purchase  
order value is in excess of \$2,000,000 and, as a result, the  
Seller has been required to submit cost or pricing data (as  
defined in FAR 15.401), the following clauses apply to this  
purchase order:

FAR 52.215-2 - Audit and Records - Negotiation  
FAR 52.215-10 - Price Reduction for Defective Cost  
or Pricing Data

FAR 52.215-12 - Subcontractor Cost or Pricing Data  
FAR 52.215-13 - Subcontractor Cost or Pricing Data  
– Modifications

FAR 52.215-15 – Pension Adjustments and Asset  
Reversions

FAR 52.215-18 – Reversion or Adjustment of Plans  
for Post-Retirement Benefits Other than Pensions

FAR 52.215-19 Notification of Ownership Changes

(i) If this purchase order involves the delivery  
or servicing of radioactive materials, the clause appearing in  
FAR 52.223-7 “Notice of Radioactive Materials” applies.

(j) FAR 52.222-24 – Pre-award On-site Equal  
Opportunity Compliance Evaluation only if this purchase  
order exceeds \$10,000,000.

(k) For purchase orders in excess of \$6,000,000,  
the following additional clauses apply:  
FAR 52.203-13 – Contractor Code of Business Ethics  
and Conduct  
DFAR 252.203-7004 – Display of Hotline Posters

12. **Fraud or Falsification.** If the items being furnished  
b the Seller under this purchase order are produced or  
manufactured on an individual basis, identifying the customer

(here the Buyer) to the deliverable item(s) at any stage prior to completion or manufacture, inspection, or test, at the point the individual deliverable item is identified to the customer, the following clause applies.

This purchase order and activities hereunder are within the jurisdiction of the Department of Energy and/or the Department of the Navy. Any knowing and willful act to falsify, conceal, or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this order may be punishable in accordance with applicable federal statutes.

The Seller agrees that all employees engaged in the performance of this purchase order shall be, if they have not been previously, informed in writing prior to their commencing performance or work under this order that there is a risk of federal criminal penalties associated with any falsification, concealment, or misrepresentation in connection with the performance of work under this order. The Seller further agrees that a signed statement shall be, if it has not been previously, obtained from said employees prior to their commencing performance of work under this purchase order that they have been so informed. The Seller shall maintain such statements for at least three (3) years after final payment under this order. An acceptable form for such written statement is substantially as follows:

“The company/division/department/branch performs work under contracts which are within the jurisdiction of the departments or agencies of the United States Government. Some of the work performed under these contracts affects the national security of the United States and the requirements of these contracts are designed to ensure that essential attributes of the work are carefully checked or inspected and that records accurately reflect the results of the work. Any falsification, concealment, or alteration of any material fact or any false, fraudulent, or fictitious statement or representation in connection with the work under any contract within the jurisdiction of the Government is not only prohibited by company policy, but may also be punishable under Federal Law. Please acknowledge by your signature that you have read and understand the above.”

The Seller agrees to include the following statement preprinted on each manufacturing, inspection, or test record used in conjunction with this purchase order:

**NOTE: “The recording of false, fictitious, or fraudulent statements or entries on this Document may be punished as a felony under Federal Statutes.”**

The Seller agrees to include this article in every subcontract or lower tier purchase order issued hereunder except those excluded by the headnote of this clause.

13. **Order of Precedence.** Any inconsistencies in this purchase order shall be resolved in the following order:

- (a) Disposition of properly authorized deviation;
- (b) Supplements to the purchase order;
- (c) purchase order exclusive of appendices, exhibits, attachments, drawings, specifications, and other plans or documents;
- (d) Appendices, exhibits, or attachments;
- (e) Drawings or specifications;
- (f) Other plans or documents referenced in the purchase order.

14. **Insurance and Indemnity.** During the entire term of this purchase order, Seller shall maintain, at its own expense, the following minimum insurance: (i) comprehensive general liability coverage, including broad form contractual coverage, providing limits for bodily injury, including death, of at least \$1,000,000 for each person and \$1,000,000 for each occurrence and property damage coverage of at least \$1,000,000 for each occurrence; (ii) Worker’s Compensation as required by applicable federal and state worker’s compensation and occupational disease statutes; (iii) Employer’s Liability of at least \$1,000,000; and (iv) Comprehensive Auto of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury. Buyer makes no representations or warranties that the insurance required under this Section will be sufficient or adequate for Seller.

All insurance policies shall be issued by an acceptable insurance company and will include the following: (i) Buyer and the principal shall be named as additional insureds (except on workers’ compensation and professional liability); (ii) a waiver of subrogation in favor of Buyer (except on professional liability); (iii) cross liability or severability or interest coverage (liability policies only); (iv) Seller’s insurance is primary and any insurance maintained by Buyer or principal is considered excess and non-contributory; and (v) a thirty (30) day advance written notice in the event of cancellation, non-renewal, or material change of any policy (the following cancellation language in quotation marks must be crossed out on the Certificate of Insurance that is provided to the Buyer: “endeavor to” and “but failure to mail such notice shall impose no obligation or liability or any kind upon Buyer, its agents or representatives). As to work done on Buyer’s premises, Seller assumes the entire responsibility and

liability for losses, expenses, damages, demands and claims in connection with or arising out of any injury (including death), or damage to property sustained in connection with or to have arisen out of the acts or omissions of Seller or its subcontractors, agents or employees. Seller shall indemnify and hold Buyer harmless from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorneys' fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reasons of any injury to or death of any person or any damage to or loss of property attributable to the acts or omissions of the Seller or its subcontractors, agents or employees.

15. **Inspection, Access, and Audit.** All work in Progress (including work performed by Seller's subcontractors and suppliers) shall be subject to inspections and tests as Buyer may direct and may be performed by Buyer, Buyer's customer, or representatives of either. If inspections and tests are made on Seller's (or Seller's subcontractor's or supplier's) premises, Seller shall furnish, at no additional charge, facilities and assistance for safe and convenient inspections and tests. Buyer may charge Seller for additional costs to Buyer when work is not ready for scheduled inspections. All shipments shall be subject to inspection and acceptance or rejection by Buyer after receipt and performance testing at site or delivery destination. Buyer shall have the right to require the prompt correction of defective work by Seller, at Seller's expense. Buyer may backcharge Seller for the cost of any corrections made by Buyer. If correction is impractical, Seller shall bear all risk after notice or rejection and shall, at Buyer's request, promptly make all necessary replacements at Seller's expense. If Seller fails to make prompt replacements, Buyer may make such replacements and backcharge Seller for excess costs incurred by Buyer. No substitutions of materials or accessories shall be made without prior written consent of Buyer.

Seller shall provide Buyer and/or Buyer's customer or their representatives with access to plant, facilities and records of Seller and its subcontractors and suppliers for inspection and/or audit.

16.) Mercury Free Certification Required: Material furnished shall be free from mercury contamination. In order to assure compliance with the requirement, mercury bearing instruments and/or equipment which might cause contamination shall not be used in the manufacture, fabrication, assembly, or testing of any material furnished under this purchase order.

The supplier is required to submit one (1) copy of certification to Dechert Dynamics Corp. containing the following information:

**“We certify that the above material is commercially free from mercury contamination.”**