



Xe Services Terms and Conditions of Procurement

PUF.017 (Rev.4)

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1. DEFINITIONS.

- A. "Buyer" means Xe Services, LLC, its parent company and its affiliates and subsidiaries.
- B. "Contract" means a mutually binding legal relationship obligating the Seller to furnish supplies or services (including construction) and the Buyer to pay for them. It includes all types of written commitments that obligate Xe Services, LLC, to an expenditure of funds.
- C. "DFAR" or "DFARS" means the current Department of Defense FAR Supplement in its entirety.
- D. "FAR" means the current Federal Acquisition Regulation in its entirety.
- E. "Order" includes but is not limited to any authorized legal Purchase Order, Change-order, Contract, Subcontract, Addenda and any related attachments thereto, issued by Xe Services, LLC, ("Xe"), to the Seller for the purchase of Product(s).
- F. "Prime Contract" means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- G. "Product" includes, but is not limited to, all articles, supplies, materials, equipment, labor, supervision, tools, demolition, facilities, services, packaging, containers, documentation, and literature necessary for and incidental to the complete provision of any item and/or the complete performance of any work, specified in an Order.
- H. "Seller" means the party identified on the face of this Order with whom Xe Services, LLC, is contracting for Product(s) and includes but is not limited to vendors and subcontractors and their subsidiaries, affiliates, subcontractors, agents, representatives, employees, officers and/or directors.
- I. "Subcontract" means any contract entered into by a subcontractor to furnish supplies and/or services for the performance of a prime contract, or a subcontract under a prime contract at any tier. It includes but is not limited to purchase orders and changes and modifications to purchase orders.
- J. "Subcontractor" means any supplier, distributor, vendor, individual or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
- K. "Vendor" means any supplier, distributor, subcontractor, individual or firm that furnishes supplies or services.
- L. "Work" means all Product(s) necessary for and incidental to complete fulfillment of an Order as specified.
- M. "Xe" means Xe Services, LLC, its parent company, affiliates and subsidiaries.
- N. "Xe Procurement Representative" means an individual designated and authorized by Xe Services, LLC.'s recognized procurement organization to administer and/or execute this or any Order.

2. **PROVISIONS AND CLAUSES APPLICABLE UNDER GOVERNMENT CONTRACTS:** If a Federal Government contract is referenced on the face of this order, this order shall be deemed to be a Subcontract under such Government contract and shall be subject to the current provisions of the FAR and the contract clauses thereof. If the Federal Government contract referenced on the face of this order is administered by the U.S. Department of Defense, this order shall be additionally subject to the DFARS and the applicable provisions and contract clauses thereof. The parties understand and agree the term "contract" shall mean this order, the term "Contractor" shall mean the Seller, and the terms "Government", "Contracting Officer", and equivalent terms shall mean the Buyer, unless such terms clearly denote the U. S. Government or the Contracting Officer.
3. **APPLICABILITY OF CLAUSES:** It is understood and agreed that any clause listed herein, except as provided by explanatory note(s), that is inapplicable to the work called for under this order, shall be deemed to be self-deleting, requiring no express deletion of said inapplicable clause. In the event of any conflict among the clauses applicable to the order, including those not applicable solely to federal contracts, the most stringent clause shall apply. Subcontractors must flow-down all applicable provisions referenced herein to any lower-tier subcontractor. If the date or substance of any of the clauses listed herein is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.
4. **52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998) (Deviation)** When accompanying a solicitation these provisions incorporate one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. If the date or substance of any of the clauses or provisions listed herein is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause or provision incorporated by said Prime Contract shall apply instead. The full text of provisions may be accessed electronically at this/these address(es):
FAR: <https://www.acquisition.gov/far/> DFARS: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
5. **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) (Deviation)** This order incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Buyer will make their full text available.
6. **ACCEPTANCE.** This Order integrates, merges and supersedes any prior offers, negotiations and agreements concerning the subject matter hereof and together with Xe-issued exhibits, attachments, and terms and conditions, constitutes the entire agreement between the parties. Any different, alternate and/or additional terms and conditions which may be contained in any document furnished by Seller in accepting this Order are hereby objected to and rejected by Xe and shall have no force and effect unless otherwise expressly agreed to in writing by Xe. Seller's acknowledgement, acceptance of payment or commencement of performance, shall constitute Seller's unqualified acceptance of this Order. Acceptance of Order signifies Seller acknowledgement and acceptance of all applicable FAR and DFARS requirements.
7. **COMMUNICATION.** Xe shall be solely responsible for all liaison and coordination with Xe customer(s), including the U. S. Government, as it affects any applicable prime contract, this Order, and/or any related contract. Only the Xe Procurement Representative has authority to make changes or amendments to this Order. Changes and amendments must be in writing. Xe engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Product(s) hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for equitable adjustment. Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Xe Procurement Representative.
8. **PERFORMANCE.** It is expressly understood that all applicable drawings, Statements of Work, and specifications constitute performance specifications. It shall be the sole responsibility of the Seller to complete the work described in the Order in full accord with all applicable codes and any requirements over the work, and in such a manner as to provide complete, adequate and operational finished product(s), free of defect and suitable for their intended purpose.
9. **RESPONSIVENESS.** Where Prime Contract clauses, terms, or conditions are flowed-down to lower tier subcontractors, in the event that a prime contract clause or other requirement stipulates a time period or deadline for submittal of documents or a response to the Government, Seller and any lower tier subcontractor(s) shall be allowed no more than sixty percent (60%) of the total time allowed Xe for submission of required documents or response, to submit all required documents or responses to Xe.
10. **PAYMENT.** Unless otherwise stated in this Order, standard payment terms shall be sixty (60) days from the later of receipt of a correct invoice from Seller, or the date of delivery of acceptable Product(s). All payments shall be made in U.S. Dollars. Xe neither guarantees nor is responsible for any liabilities incurred by any Third Party Designees under this Order. Xe shall have a right of setoff against payments due or at issue under this Order or any other Order between the parties. Each payment shall be subject to reduction to the extent of amounts which are found by Xe or Seller not to have been properly payable, and shall also be subject to reduction for overpayments. Seller shall promptly notify Xe of any such overpayments found by Seller. Payment shall be deemed to have been made as of the date of mailing Xe's payment or electronic funds transfer. Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.



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Payment Specific to Motor Vehicle and/or Equipment Manufacturers: Where applicable and specific to Motor Vehicle and Equipment Manufacturers, the payment obligations of Xe shall be incurred only upon acceptance by the U.S. Government or state, provincial, local or foreign government of the completed vehicle or equipment with the manufacturer-provided materials and/or services. Acceptance by the U.S. Government (or state, provincial, local or foreign government) will be demonstrated by the receipt by Xe of a Form DD250 from the U.S. Government (or equivalent form from such other government unit) to pay the manufacturers for materials and/or services provided with respect to such vehicles. Prompt Payment: Offers of prompt payment discounts shall be considered and computed in accord with FAR 52.232-8. Electronic Purchases: Procurements under U.S Government prime contracts shall conform to the requirements and policies of FAR 13.003 (Simplified Acquisition Procedures).

11. **PRECEDENCE.** Any inconsistencies or conflicts, if any, among the provisions of the Order shall be resolved in accord with the following descending order of precedence: (i) face of the Order and all applicable attachments; (ii) these Terms and Conditions; (iii) other specifications or documents incorporated by reference (iv) Statement(s) of Work referenced on the Order.
12. **CHANGES.** Xe reserves the right at any time without notice to sureties or assignees, if any, to make changes or modifications to the general scope of the Order, including but not limited to, drawings, specifications, and delivery schedule pertaining to any Product(s) covered by the Order. Xe will issue such change(s) in writing ("Change Order"). Any increase or decrease in price or performance period resulting from such changes shall be equitably adjusted, and the Order shall be modified in writing accordingly. Seller must assert its right to an adjustment under this provision in writing, delivered to Xe's Procurement Representative within fifteen (15) days from Seller's receipt of the written Change Order. If Seller's request includes the cost of property or materials made obsolete or excess by the change(s) Xe shall have the right to prescribe the manner of disposition of the property. Failure to agree on any adjustment shall be deemed a dispute under this Order, and shall be resolved in accordance with the Disputes provisions of the Order. Nothing in this provision shall excuse Seller from continuing performance as changed without delay.
13. **SHIPMENT.** Unless otherwise specified, all Products are to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading and shipping information, including the Xe Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include the Order number. Unless otherwise specified, delivery shall be FOB / Destination. Shipments of Product(s) must equal exact quantity ordered, unless otherwise agreed to in writing. Product(s) shall not be supplied in excess of quantities specified in the Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities. The Product(s) to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used or reconditioned or remanufactured or of such age as to impair its usefulness or safety. Shipping schedules may contain authorization to Seller to fabricate, within a time specified, quantities of Products under this Order, the delivery of which has not been specified. It may also contain authorization to Seller to acquire, within a specified period of time, materials necessary to fabricate a quantity of the Products under this Order.
14. **STOP WORK ORDER.** Xe may at any time and by written order to Seller require the Seller to stop all, or any part of, the work being performed hereunder for a period not to exceed ninety (90) days, or for such period as Xe and its customer may agree under a contract ("Stop Work Order"). Upon receipt of the Stop Work Order Seller will immediately comply with the terms of the Stop Work Order and will take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order. Within the ninety day period (or such other period as agreed to between Xe and its customer) Xe will either (i) cancel the Stop Work Order; or (ii) terminate the work covered as provided in the Termination provisions of the contract. If the Stop Work Order is canceled or the ninety day period expires, the Seller shall resume work and an equitable adjustment as to cost and/or schedule shall be made in accordance with the Changes provision.
15. **PRICING AND INVOICE DISPUTES.** All pricing and invoice disputes with Xe must be identified by Seller in writing to Xe within ninety (90) days of the date of Xe's receipt of Seller's shipment, or performance of the work. On disputes that have not been identified to Xe by Seller in writing within this time, Seller agrees to accept whatever payment deemed appropriate by Xe. All properly identified disputes under this Order which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Order as directed by Xe. Any controversy or claim arising out of or relating to the Order, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
16. **EQUIPMENT MAINTENANCE.** Unless otherwise agreed to in writing, Seller shall furnish at its own expense, keep in good condition, and replace when necessary, all dies, tools, gauges, fixtures and patterns necessary for the production of the Products ordered. Title to all property, including equipment furnished at no charge to Seller by Xe or the U. S. Government ("GFE") for Seller's performance of its obligations under this Order, shall at all times vest in Xe or the U.S. Government in the case of GFE, and Seller assumes all liability for any loss, damage, or shortage and/or for Seller's failure to return such property to Xe upon request. Seller shall promptly notify Xe of any such loss, damage, or shortage in writing.
17. **INSPECTION AND ACCEPTANCE.** Xe and its customer, including but not limited to the U.S. Government, may inspect all work at reasonable times and places, including during manufacture, at the source and before shipment pursuant to the provisions of FAR 52.246. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Order. Xe's final inspection and acceptance shall be at destination. If Seller delivers non-conforming Work, Xe may at its sole option: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Order requirements and charge the cost incurred to Seller. Seller shall not re-tender rejected Work without disclosing the corrective action taken.
18. **WAIVERS, APPROVALS, AND REMEDIES.** Failure by Xe to enforce any of the provisions of this Order shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of Xe thereafter to enforce each such provision. Xe's approval of documents shall not relieve Seller of its obligation to comply with the requirements of this Order. The rights and remedies of Xe in this Order are cumulative and in addition to any other rights and remedies provided by law or in equity.
19. **PRIORITY RATING.** If so identified, as a "rated order" certified for national defense use, the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700) per FAR 52.211-15
20. **SUPPLY FAILURE.** In the event of a partial failure of Seller's sources of supply for the Products purchased, Seller will first meet all of Xe's requirements hereunder prior to any allocation among customers under Section 2-615 of the Uniform Commercial Code.
21. **TIMELY PERFORMANCE.** Seller's timely performance is a critical element of this Order. Unless advance shipment has been authorized in writing by Xe, Xe may, at its sole option, store at Seller's expense, or return, shipping charges collect, all Products received more than five (5) days in advance of the scheduled delivery date. If Seller becomes aware of difficulty in fulfilling the Order, Seller shall timely notify Xe, in writing, providing all pertinent details. This notification shall not change any delivery schedule or due date. In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Xe. If Xe determines that Seller's deliveries are sufficiently behind schedule that Xe requires express shipments, the Seller will pay the express shipping charges. If Xe determines that Seller's deliveries are sufficiently behind schedule that Xe is compelled to use material or products other than specified or at a higher cost, then



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Seller will pay all additional costs, expenses, losses, or damages sustained by Xe. The provisions of this paragraph are not intended to limit any other rights and remedies available to Xe.

22. **DEFAULT.** Xe, by written notice, may terminate this Order for default, in whole or in part, if Seller: (a) fails to comply with any of the terms of this Order; (b) fails to make progress so as to endanger performance of this Order; or (c) fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as Xe may authorize in writing) to cure any such failure after receipt of notice from Xe. Default involving delivery schedule delays shall not be subject to the cure provision. Seller shall be compensated only for Work actually delivered and accepted where applicable. Xe, at its sole option, may require Seller to deliver to Xe any supplies, materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Order. Xe and Seller shall agree on the amount of payment for these other deliverables. Seller shall continue all Work not terminated. If after termination under (a) above, it is determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.
22. **ELECTRONIC CONTRACTING.** The parties agree that if this Order is transmitted electronically neither party shall contest the validity of this Order, or any acknowledgement thereof, on the basis that this Order or Acknowledgement contains an electronic signature.
23. **INTELLECTUAL PROPERTY.** Seller warrants that the Work performed or delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify, and hold harmless Xe and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Order infringes or otherwise violates the intellectual property rights of any person or entity. All data, copyrights, reports, and works of authorship developed in performance of this Order shall be the sole property of Xe and shall be used by Seller solely in work for Xe. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, Seller hereby assigns to Xe the ownership of copyright and other intellectual property rights in the deliverable items and Xe shall have the right to obtain and hold in its own name copyrights, registrations, intellectual property rights and similar protection which may be available in the deliverable items. Seller agrees to give Xe or its designees all assistance reasonably required to perfect such rights.
25. **WARRANTY.** Seller warrants that all Work furnished pursuant to this Order shall strictly conform to all applicable specifications, drawings, samples, descriptions, and other requirements of this Order and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, Seller, at Xe's option, shall promptly repair, replace, or re-perform the non-conforming Work. Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at Seller's expense. If repair, replacement, or re-performance of Work is not timely, Xe may elect to return, re-perform, repair, replace, or re-procure the Work at Seller's expense. All warranties shall accrue to Xe and its customers.
26. **GRATUITIES/KICKBACKS.** No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Xe for the purpose of obtaining or rewarding favorable treatment as a supplier. By accepting this Order, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference. Seller shall at all times comply with the requirements of FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions" (OCT 2010) on all applicable orders over \$150,000 USD.
27. **ACCESS TO PREMISES.** Xe shall have access to Seller's premises and records prior or subsequent to payment to verify any disputed charges. Seller agrees to make available to Xe all records relating to the performance of this order should Xe require such information as elsewhere herein provided or for purposes of resolving any dispute or claim pressed upon Xe within a period of three (3) years after final payment under this order. Seller further agrees that if this order was awarded in connection with a Government contract exceeding \$10,000, the Comptroller General of the United States or any of his duly authorized representatives shall have access to and right to examine records of Seller in accordance with the Examination of Records clause 52.215-1 as set forth in the Federal Acquisitions Regulations in effect on the date of this order. Seller agrees to incorporate the provisions of this clause in all lower-tier subcontracts pertaining to this order. FAR 52.215-2 Audit and Records – Negotiation for contracts exceeding the Simplified Acquisition Threshold.
28. **NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA).** Seller will provide annually to Xe by the specified due date, an accurate and complete NAFTA Certificate of Origin for those products and materials that qualify for NAFTA and an accurate and complete Country of Origin affidavit for all products and materials. The NAFTA Certificate of Origin must be completed in accord with regulations published by the U.S. Department of the Treasury, including any amendments and in accord with instructions issued annually to Seller by Xe. In the event that Seller fails to comply with this requirement, Xe will charge back to Seller and Seller will promptly reimburse Xe for all import duties, penalties, and taxes paid by the Xe as a result of Seller's non-compliance. Xe reserves the right to charge Seller \$250 USD non-compliance penalty per Product charge.
29. **QUALITY.** Unless specifically exempted in writing by Xe, Seller is required to be registered as, compliant with, or working towards ISO Certification or an acceptable alternative Quality Management System. If currently registered, Seller must maintain certification with an accredited registrar and must furnish copies of registration certificates to Xe annually or upon request. If Seller is ISO compliant but not certified by a recognized third-party registrar, Seller agrees to provide evidence of such compliance to Xe. If Seller is working towards quality registration, then Seller must provide upon request evidence of such efforts and upon receipt of registration certification, notify Xe and furnish copies of registration certificates.
30. **DIVERSITY.** Seller agrees to utilize "Small Business Concerns, Small Disadvantaged-Owned Business Concerns, Minority-Owned Business Concerns, Women-Owned Business Concerns, Service-Disabled-Owned Veteran Business Concerns, and HUB zone-Located Business Concerns" as required by Federal Law (FAR Part 19). Seller will use all reasonable efforts to achieve any diversity-related goal provided to Seller which is applicable to the goals set forth in any prime contract(s) under which this Order and/or Subcontract is issued. Seller also agrees to report to Xe all diversity related goal accomplishments on a quarterly basis in such format as requested. For the purpose of satisfying the aforementioned goals it is acknowledged that (i) diversity goals apply only to those goods and services purchased by Seller in the United States; and (ii) purchases of goods and services may be entitled to credit toward more than one diversity-related goal depending upon the status of the subcontractor or vendor.
31. **INDEMNIFICATION.** Seller agrees to protect, defend, hold harmless and indemnify Xe against all claims, actions, liabilities, losses, costs, and expenses, including, without limitation, reasonable legal cost and fees, punitive damages, consequential damages, and penalties arising out of any actual or alleged death of, or injury to, any person and/or damage to any property, by whosoever suffered, resulting or claimed to result, in whole or in part, from any actual or alleged defect in the supplied Products, including actual or alleged improper design, manufacture, or assembly of such Products, or arising out of any actual or alleged violation by such Products, or their manufacture, possession, use or sale, or any law, statute, or ordinance, or any governmental administrative order, rule, or regulation.



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32. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws of the State from which this Order is issued, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, 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 federal Government. Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. If, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, (i) Xe's contract price or fee is reduced; (ii) Xe's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Xe; or (iv) Xe incurs any other costs or damages, Xe may proceed as provided for herein. Upon the occurrence of any of the circumstances identified above, Xe may, at its sole option, make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with Seller, or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Xe hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended. Seller shall provide to Xe with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.
33. **BERRY AMENDMENT- BUY AMERICAN.** In the event that the Order includes Product(s) procured for or funded by the U.S. Department of Defense or any branch thereof, Seller shall insure and certify in writing to Xe that said product(s) are in full compliance with the requirements of the Berry Amendment per DFARS Part s 252.225.7000 through 252.225.7045; or shall provide written certification that said Product(s) are exempt from the requirement pursuant to the exceptions established therein.
34. **SURVIVABILITY.** If this Order expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:
- | | |
|---|--|
| a. Applicable Laws (#32) | f. Intellectual Property (#24) |
| b. Electronic Contracting (#23) | g. Prohibited Software (#43) |
| c. Export Control (#41) | h. Confidentiality (#38) |
| d. Independent Contractor Relationship (39) | i. Warranty (#25) |
| e. Insurance (#40) | j. US Government flowdown provisions that by their nature should survive (#45) |
35. **SEVERABILITY.** Each paragraph and provision of this Order is severable, and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions of this Order shall remain in full force and effect.
36. **ASSIGNMENT.** Any assignment of Seller's Contract rights or delegation of Seller's duties shall be void, unless prior written consent is given by Xe. Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Xe is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to set-off or recoupment for any present or future claims of Xe against Seller. Xe shall have the right to make settlements and/or adjustments in price without notice to any assignee.
37. **OWNERSHIP OF MATERIALS.** All materials, including without limitation, documents, drawings, models, sketches, designs, software, computer tapes and disks, and lists furnished to Seller by Xe or by the U.S. Government, shall remain the property of Xe or U.S. Government as the case may be and shall be returned promptly upon completion of the assigned project, or at any time upon written request of Xe or the U.S. Government. Seller agrees not to make copies of any such materials without Xe's or U.S. Government's express written permission and to return any copies authorized with the original materials.
38. **CONFIDENTIALITY.** Seller agrees not to disclose to any third party, or use, except in connection with the furnishing of the Product(s) under this Order, any confidential information relating to Xe's business, including business and marketing plans, processes, products, equipment, or trade secrets, as well as confidential information resulting from the performance of this Order. Any information not available to the public shall be considered confidential for the purposes of this Order; but should any of this information be published or otherwise made available by the public by Xe or by third parties without breach of this Order, Seller shall be free to use for its own purposes only that information which is actually publicly available. Confidential information that is owned by the U.S. Government or in which the U.S. Government has the right to use and which is provided to Seller either by Xe or by the U.S. Government under this Order and unless otherwise directed in writing, shall be used by Seller only in performance of its obligations pursuant to this Order. All rights, title and interest in said confidential information shall remain with and vest in the U.S. Government. Seller will have no ownership rights in said confidential information nor shall Seller have any right to license or sublicense such confidential information without the expressed prior permission of the U.S. Government. Seller shall upon request execute the following in then-current form: (a) Xe Confidentiality and Nondisclosure Agreement; (b) Annual Vendor Representations and Certifications; and (c) Any certifications, representations, reports or documents required by an applicable prime contract or government entity. By acceptance of this Order Seller acknowledges it understands and is bound by the terms of any Nondisclosure Agreement executed with Xe and all terms thereof are incorporated herein by reference.
39. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Order shall be Seller's employees exclusively without any relation whatsoever to Xe. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Order.
40. **INSURANCE.** In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Xe or its customers for any reason in connection with this Order then Seller and its subcontractors shall procure and maintain for the performance of this Order worker's compensation, comprehensive general liability, bodily injury and property damage insurance in prescribed amounts, and such other insurance as Xe may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall provide Xe thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller's of its obligations to procure and maintain the required insurance. If requested, Seller shall provide a current "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name Xe as an additional insured for the duration of this Order. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Xe and is not contributory with any insurance which Xe may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Order. Seller shall indemnify and hold harmless Xe, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.



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- 41. **EXPORT CONTROL.** Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
 - a) Seller agrees to notify Xe if any deliverable under this Order is restricted by export control laws or regulations.
 - b) Seller shall immediately notify the Xe Procurement Representative if Seller is, or becomes, listed in any Excluded Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
 - c) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
 - d) Where Seller is a named party in a Xe export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to the Xe Procurement Representative in the event of changed circumstances including, but not limited to, changes in ownership or company name, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Seller's performance under this Order.
 - e) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause

- 42. **TERMINATIONS.**
 - A. For special or custom Product(s):
 - 1) Xe may terminate part or all of this Order for its convenience by giving written notice to Seller.
 - 2) Upon termination, in accord with Xe written direction, Seller will immediately:
 - a) Cease production;
 - b) Prepare and submit to Xe an itemization of all completed and partially completed deliverables and product(s);
 - c) Deliver to Xe deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the Order or Statement of Work; and
 - d) Deliver upon request any Work in progress
 - 3) In the Event Xe terminates for its convenience after performance has commenced, Xe will compensate Seller for the actual, allowable, and reasonable expenses incurred by Seller for work in progress up to and including the date of termination, provided Seller exercises reasonable efforts to mitigate Xe's liability under this provision.
 - 4) In no event shall Xe be liable for lost or anticipated profits, unabsorbed direct costs or overhead, or for any sum in excess of the total Order price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of termination.
 - B. For other than special or custom Product(s): Xe may terminate part or all of this Order for its convenience by giving written notice to Seller and Xe's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge not to exceed 10%.
 - C. In either case, Seller shall continue all production not terminated by Xe.
 - D. If a Federal Government contract is referenced on the face of this order, this order shall be deemed to be a subcontract under such Government contract and subject to the provisions of FAR 52.249-1 through FAR 52.249-14 of the Federal Acquisition Regulations.

- 43. **PROHIBITED SOFTWARE**
 - A. This clause only applies to Work that includes the delivery of software.
 - B. As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL Compatible, Free Software License."
 - C. As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Xe to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
 - D. Unless Seller has obtained Xe's prior written consent, which Xe may withhold in its sole discretion, Seller shall not use in connection with this Contract, or deliver to Xe, any Prohibited Software.
 - E. Seller agrees to defend, indemnify, and hold harmless Xe, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Contract or the delivery of Prohibited Software.

- 44. **GOVERNMENTAL REQUIREMENTS.** Seller agrees to comply with all applicable statutes, regulations, laws, and other Government requirements, including but not limited to those reflected in contract clauses set forth in 48 C.F.R. Sections 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008); 52.219-8, Utilization of Small Business Concerns (May 2004); 52.222-26, Equal Opportunity (Mar 2007); 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006); 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998); 52.222-41 Service Contract Act of 1965 (Nov 2007); and 52.247-64 Preference for Privately Owned U.S.- Flag Commercial Vessels (Feb 2006) and provide evidence of such compliance to Xe upon Xe's request. The term "Contractor" and similar terms used in such FAR provisions shall be construed to mean Seller for the purposes of this Contract.

- 45. **STANDARD FLOWDOWN CLAUSES AND PROVISIONS.** If a Federal Government contract is referenced on the face of this order, this order shall be deemed to be a subcontract under such Government contract and subject to all applicable FAR and DFAR provisions and clauses referenced herein which are incorporated by reference and shall be flowed-down to all lower tier subcontractors by the Seller where applicable. (Includes any additional provisions and clauses specific to an individual Government contract which are attached.)

FAR	DESCRIPTION	DATE
Subpart 4.8	Government Contract Files (<i>recordkeeping and closeout requirements and guidelines</i>)	
9.601-9.604	Contractor Team Arrangements (<i>including anti-trust limitations and general limitations</i>)	



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13.106	Soliciting Competition, Evaluation Of Quotations Or Offers, Award And Documentation. (Simplified Acquisition Procedures)	
Part 16	Types of Contracts (Guidance for Contract Type Selection and Use)	
16.603	Letter Subcontracts – Specific guidance on the applicability and requirements of Letter Subcontracts)	
31.205-10	Cost of Money – Contract Cost Principles – Contracts with Commercial Organizations	
44.201-1	Consent Requirements	
44.201-2	Advance Notification Requirements	
Part 48	Value Engineering	
51.103	Ordering from Government Supply Sources (requires authorization)	
52.203-7	Anti-Kickback Procedures (Applies to all solicitations and subcontracts exceeding the Simplified Acquisition Threshold)	JUL 1995
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. (Applies to solicitations and contracts expected to exceed \$150,000)	SEPT 2007
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Applies to solicitations and contracts expected to exceed \$150,000)	OCT 2010
52.203-13	Contractor Code of Business Ethics and Conduct (Applies to solicitations and contracts exceeding \$5M in value with a performance period of 120 days or more)	DEC 2008
52.203-14	Display of Hotline Posters (applies unless contract is for commercial items or will be performed outside of U.S.)	DEC 2007
52.204-2	Security Requirements (applies to any order that may require access to classified information)	AUG 1996
52.204-7	Central Contractor Registration (applies to all solicitations and contracts above Micro Purchase Threshold)	APR 2008
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Applies to all subcontracts in excess of \$30,000)	SEPT 2006
52.210-1	Market Research (Applies to all solicitations and contracts above the Simplified Acquisition Threshold other than commercial items)	APR 2011
52.211-8	Time of Delivery (applies to solicitations and contracts other than construction and architect-engineering)	JUN 1997
52.211-9	Desired and Required Time of Delivery (applies to solicitations and contracts other than construction and architect-engineering)	JUN 1997
52.211-15	Defense Priority and Allocation Requirements (applies to rated orders certified for national defense use)	SEP 1990
52.211-17	Delivery of Excess Quantities	SEPT 1989
52.212-3	Offeror Representations and Certifications – Commercial Items	APR 2011
52.212-4	Contract Terms and Conditions – Commercial Items (Applies to time-and-materials or labor-hour contracts and related solicitations)	MAR 2009
52.215-2	Audit and Records – Negotiation (Does not apply to Utilities, Commercial Products or Acquisitions at or below Simplified Acquisition Threshold)	OCT 2010
52.215-9	Make or Buy (applies to solicitations with a make or buy program)	OCT 1997
52.215-12	Subcontractor Cost or Pricing Data (applies to any order in which certified cost or pricing data must be submitted by the Seller in connection with establishing the pricing of the order)	OCT 1997
52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (for solicitations & orders over \$650,000 (\$1M for public facility const.))	SEP 2006
52.222-18	Certification Regarding Knowledge of Child Labor for Listed End Products	FEB 2008
52.222-19	Child Labor-Cooperation with Authorities and Remedies	JUL 2010
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-22	Previous Contracts and Compliance Reports	FEB 1999
52.222-24	Preaward On-Site Equal Opportunity Compliance Evaluation (Applies to contracts exceeding \$10,000,000)	FEB 1999
52.222-25	Affirmative Action Compliance	APR 1984
52.222-50	Combating Trafficking in Persons (Substitute "Xe Procurement Representative" for "Contracting Officer" throughout this provision. In subparagraph (e) insert "Xe" following "Government")	FEB 2009
52.223-1	Biobased Product Certification	DEC 2007
52.223-4	Recovered Material Certification	MAY 2008
52.223-11	Ozone-Depleting Substances (Applicable if subcontract work is manufactured with or contains ozone depleting Substances)	MAY 2001
52.223-15	Energy Efficiency in Energy-Consuming Products	DEC 2007
52.223-18	Contractor Policy to Ban Text Messaging While Driving	SEPT 2010
52.225-5	Trade Agreements (Applicable if the subcontract work contains other than U.S. made or designated country end products as specified)	NOV 2007
52.225-8	Duty-Free Entry (Applicable for subcontracts where (i) supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or (ii) other foreign supplies in excess of \$10,000 may be imported in the customs territory of the US)	FEB 2000
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-3	Patent Indemnity, Alternate III (Jul 1995)	APR 1984
52.227-11	Patent Rights – Ownership by the Contractor	DEC 2007
52.227-13	Patent Rights – Ownership by the Government	DEC 2007
52.227-22	Major System – Minimum Rights (Government rights to technical data)	JUN 1987
52.227-23	Rights to Proposal Data – (Government's rights to proposal data)	JUN 1987
30.201-4		
52.230-1	Administration of Cost Accounting Standards; (Only applicable if CAS Covered)	JUN 2010
52.230-6		
52.232-8	Discounts for Prompt Payment (Fixed Price contracts)	FEB 2002
52.232-16	Progress Payments (applies to solicitations and contracts for which progress payments may be stipulated)	APR 1984
52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration.	OCT 2003
52.232-34	Payment By Electronic Funds Transfer—Other Than Central Contractor Registration	MAY 1999
52.232-35	Designation Of Office For Government Receipt Of Electronic Funds Transfer Information	MAY 1999
52.232.36	Payment By Third Party	FEB 2010
52.232-37	Multiple Payment Arrangements	May 1999
52.242-2	Production Process Reports – (Applies FAR 42.11 to all contracts for supplies or services except construction)	APR 1991
52.243-4	Changes – (applies to solicitation and contracts for demolition or for construction orders exceeding the simplified acquisition threshold)	JUN 2007
52.244-2	Subcontracts (applies to all cost reimbursement contracts and all contracts that exceed the Simplified Acquisition Threshold)	JUN 2007



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52.244-5	Competition in Subcontracting <i>(applies to all negotiated contracts exceeding the simplified acquisition threshold except firm fixed price, time and materials, labor-hour and architect-engineer contracts)</i>	DEC 1996
52.244-6	Subcontracts for Commercial Items	DEC 2009
52.245-2	Government Property Installation Operation Services <i>(applies only to work on government installations)</i>	JUN 2007
52.252-3	Alterations in Solicitation	APR 1984
52.252-4	Alterations in Contract	APR 1984
52.252-5	Authorized Deviations in Provisions	APR 1984
52.252-6	Authorized Deviations in Clauses	APR 1984
DFAR	(APPLY TO DEPARTMENT OF DEFENSE CONTRACTS ONLY)	
252.225-7003	Report of Intended Performance Outside the United States and Canada – Submission with Offer <i>(applies to offers exceeding 11.5M)</i>	DEC 2006
252.225-7004	Report of Intended Performance Outside the United States and Canada – Submission after Award <i>(applies if any portion of the contract exceeding \$550,000 will be performed outside of US or Canada-see exceptions)</i>	MAY 2007
252.225-7008	Restriction on Acquisition of Specialty Metals	JUL 2009
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	JUL 2009
252.225-7010	Commercial Derivative Military Article – Specialty Metals Compliance Certificate	JUL 2009
252.234-7002	Earned Value Management System	APR 2008

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