

# SEAKR Engineering, Inc.

## GENERAL COMMERCIAL TERMS AND CONDITIONS

### Part 1 - GENERAL PROVISIONS

1. Acceptance of Order
2. Assignment
3. Company and Employee Status
4. Compliance With Laws
5. Counterfeit Parts
6. Disputes
7. Excess Quantities
8. Export Control
9. Independent Contractor
10. Inspection and Acceptance
11. Insurance for Work on SEAKR Premises
12. Intellectual Property
13. Intellectual Property Indemnity
14. Language
15. Limitation of Liability
16. New Material
17. Order of Precedence
18. Packing and Shipping
19. Payments
20. Price and Delivery
21. Product Changes
22. Proprietary Information
23. Publicity
24. Quality Control System
25. Record Retention
26. Responsibility for Claims / Indemnity
27. Right of Access
28. SEAKR Furnished Property
29. Stop Work
30. Subcontracting
31. Survivability
32. Termination
33. U.S. Government Contract
34. Waiver and Severability
35. Warranty

### Part 2 - T&M, CONTRACT LABOR, AND SERVICES PROVISIONS

**Part 3 – CERTIFICATIONS, REPRESENTATIONS, AND FAR FLOWDOWN PROVISIONS** (Applies only to Orders issued under a U.S. Government contract/subcontract, as indicated on the face of the Order)

**DEFINITIONS:** As used in herein, the following terms shall have the meaning set forth as follows. The term "SEAKR" means SEAKR Engineering, Inc. The term "Order" means the contract, subcontract, or purchase order, if any, between SEAKR and SELLER, which incorporates these terms. The term "Product" means the goods, material, data, parts, computer software, items, reports, components, articles, assemblies, any related services, or other items ordered by this Order. The term "Services" means SELLER's time and effort, including any supplies, materials, articles, data, items, parts, components or assemblies incidental to the performance of the Services. The term "Work" means any Product or Services provided by the SELLER under this Order.

### Part 1 - GENERAL PROVISIONS

#### 1. Acceptance of Order

This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Order. SEAKR recognizes that SELLER may desire to utilize its own form of acknowledgment of this Order. All material and non-material provisions in SELLER's form of acceptance which modify, conflict with, contradict, or are in addition to any provision in this Purchase are rejected by SEAKR and shall be deemed to be waived by SELLER, unless expressly agreed to in writing by SEAKR.

#### 2. Assignment

SELLER shall not assign this Order, duties, or any rights under this Order without the prior written consent of SEAKR, such consent shall not be unreasonably withheld, and no purported

assignment by SELLER shall be binding on SEAKR without written notice.

#### 3. Company and Employee Status

(a) Both parties represent that any individual assigned to this Order is legally authorized to work in the U.S. A party may be required to obtain information concerning citizenship or immigrant status of the other party's personnel or subcontractor personnel entering the premises of the party. The entering party agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on the other party's premises. Information submitted by the party shall be certified by an authorized representative of the party as being true and correct. Proper identification of personnel may include, but not be limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

(b) All personnel assigned by SELLER to perform the Services to be furnished in the Order shall be capable, skilled, qualified and competent to perform such Services.

(c) SEAKR may, at its sole discretion, have SELLER remove any specified employee of SELLER from SEAKR's premises and request such employee not be reassigned under this Order.

(d) SELLER will promptly notify SEAKR and provide a report of any accidents or security incidents involving loss or misuse or damage to SEAKR's intellectual or physical assets.

(e) SELLER shall ensure SELLER's personnel are aware of their contribution to product or service conformity; their contribution to product safety; and the importance of ethical behavior.

(f) In consideration of the commitment made by SEAKR in this Order, SELLER shall not, either alone or in association with

others solicit, entice or encourage any organization directly or indirectly controlled by SELLER to solicit any employee of SEAKR to leave the employ of SEAKR for a period of three (3) years from the termination or expiration of the Order.

#### **4. Compliance With Laws**

The parties shall comply with all applicable local, state, and federal 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.

SELLER shall provide to SEAKR with each delivery any Safety Data Sheet (or successor form) 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.

#### **5. Counterfeit Parts**

For the purposes of this provision, "Counterfeit Parts" means Products that are or contain items misrepresented as having been designed and/or produced under an approved system or other acceptable method. SELLER hereby warrants that all hardware furnished is authentic. If suspect or Counterfeit Parts are furnished under this Order and are found in any of the Product delivered hereunder, such items may be impounded by SEAKR. SELLER shall immediately notify SEAKR with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Parts. SELLER shall promptly replace such suspect or Counterfeit Parts with parts acceptable to SEAKR and SELLER shall be liable for all costs relating to the removal and replacement of said parts, including without limitation SEAKR's and its customer's external and internal costs of removing Counterfeit Parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of SELLER's Product after Counterfeit Parts have been exchanged. SELLER shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages. SELLER's liability for suspect or Counterfeit Parts shall not expire until five (5) years after delivery. At SEAKR's request, SELLER shall return any removed Counterfeit Parts to SEAKR.

#### **6. Disputes**

In the event that the parties cannot settle any claim or controversy arising out of this Order themselves, the parties agree to attempt in good faith to resolve such claim or controversy by mediation. Any dispute that is not settled by agreement of the parties or by such mediation within thirty (30) days after commencement of the mediation may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceeding or other settlement of any dispute arising under this Order, SELLER shall proceed diligently with the performance of this Order as directed by SEAKR. This Order shall be governed by and construed according to the laws of the State of Colorado, without giving effect to its choice of law principles. The parties agree that all actions and proceedings arising out of or relating directly or indirectly to this Order obligations shall be resolved solely and exclusively in the state courts located in Colorado, and that such courts are convenient forums. Each party hereby submits to the personal jurisdiction of such courts for purposes of any such actions or proceedings

#### **7. Excess Quantities**

Should SEAKR choose to return any excess Product delivered against this Order, SELLER shall be liable for and prepay handling charges and return shipment costs for any excess quantities.

#### **8. Export Control**

(a) The parties agree to comply strictly with all applicable export laws and regulations including but not limited to the requirements of the Arms Export Control Act, the International Traffic in Arms regulations (ITAR), Export Administration Act, and the Export Administration Regulations (EAR). SELLER assumes sole responsibility for obtaining licenses to export or re-export as may be required.

(b) SELLER agrees to notify SEAKR if any deliverable under this Order is restricted by export control laws or regulations.

(c) SELLER shall immediately notify the SEAKR Procurement Representative if SELLER is listed in a Denied 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.

(d) SELLER shall indemnify and hold harmless SEAKR for any and all liability or expense incurred by SEAKR as a result of SELLER's failure to comply with all applicable export laws and regulations in the performance of this Order.

#### **9. Independent Contractor**

(a) SELLER is an independent contractor in all its operations and activities identified in this Order. Neither party shall be deemed an agent of the other. The employees used by the SELLER to perform the work and services under this Order shall be the SELLER's employees exclusively without any relation whatsoever to SEAKR. SELLER shall be liable for any and all costs and expenses the SELLER incurs in the performance of any of its obligations under this Order.

(b) SELLER shall maintain responsibility for means, methods, and safety in performing Services. SELLER shall be responsible for the payment of all applicable taxes and other governmentally imposed responsibilities including, but not limited to, payment of State, Federal and Social Security taxes, unemployment taxes, workers' compensation and self-employment taxes. No Federal, State or local taxes of any kind shall be withheld or paid by SEAKR. SELLER shall hold SEAKR harmless from any responsibility for taxes, damages and interest arising from the performance of the Order. In the event SELLER fails to make any such payments, SELLER indemnifies SEAKR for any claims, causes of action, or liabilities which may be made, advanced, or incurred against SEAKR as a result of such non-payment.

#### **10. Inspection and Acceptance**

Whether or not an inspection point is provided in the Order, all product and services shall be subject to inspection and testing by SEAKR or SEAKR's customer at all reasonable times, and places, including after arrival at destination and, when practicable, during manufacture. SELLER is responsible for providing appropriate test and inspection equipment in the event SEAKR requests an inspection audit. If any Product or Services are found to be defective in material or workmanship, or otherwise are not in conformity with this Order, SEAKR has the right to reject such product or services or require their

correction. Verification by SEAKR or SEAKR's customer shall not absolve the supplier of the responsibility to provide acceptable Product/Services, nor shall it preclude subsequent rejection by SEAKR. SELLER shall bear all risks as to rejected Product/Services after notice of rejection, and SELLER shall pay all shipping costs on rejected Product.

#### **11. Insurance for Work on SEAKR Premises**

In the event that SELLER, its employees, or any subcontractor thereof perform work on SEAKR's premises for any reason in connection with this Order, SELLER and its subcontractors shall maintain for the performance of this Order workers compensation, commercial (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as SEAKR may require. SELLER shall name SEAKR as an additional insured to the CGL and AL policies for the duration of this Order. If requested, SELLER shall provide SEAKR with a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of SEAKR and is not contributory with any insurance which SEAKR may carry.

#### **12. Intellectual Property**

Subparagraph (a) is NOT applicable for commercial off-the-shelf Products unless such off-the-shelf Products is modified or redesigned pursuant to the Order.

(a) SELLER agrees that SEAKR shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information, and other information (collectively "Intellectual Property"), conceived, developed, or otherwise generated in the performance of this Order by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to SEAKR, including without limitation, all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at SEAKR's request and expense, all documentation necessary to perfect title therein to SEAKR.

(b) For any Intellectual Property not disposed of by Subparagraph (a), SELLER grants to SEAKR a license in lieu of ownership, SELLER grants to SEAKR an irrevocable except for breach, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license (i) to use, reproduce, distribute, modify, and prepare derivative works of such SELLER -Owned IP and (ii) to use, offer for sale, sell, distribute products and services that incorporate or embody such SELLER -Owned IP, in each case solely as necessary for the purpose of exploiting SEAKR's rights in the Products or Services in connection with fulfilling SEAKR's obligations under its upper tier contract (including any related or follow on contract).

#### **13. Intellectual Property Indemnification**

SELLER warrants that the Work performed under and/or delivered against this Order shall not infringe or otherwise violate the intellectual property rights of any third party in the U.S. or any foreign country. SELLER agrees to defend, indemnify and hold harmless SEAKR and its customers from and against any claim, damages, losses, costs and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the Work performed under and/or delivered against this Order infringes or otherwise violates the intellectual property rights of any

person or entity provided that SEAKR notifies SELLER at such time as it is apprised of the third-party claim, and agrees to give sole and complete authority, information and assistance (at SELLER's expense) for the defense and disposition of the claim. SELLER shall not be responsible for any compromise or settlement made without SELLER's consent.

SELLER shall have no obligation or liability with respect to: (i) Products provided pursuant to SEAKR's designs, drawings or manufacturing specifications; (ii) Products used other than for their ordinary purpose; (iii) claims of infringement resulting from combining any Product furnished hereunder with any article not furnished by SELLER; or (iv) any modification of the Product other than a modification by SELLER. that a claim is likely, SELLER may, at SEAKR's option, and at SELLER's expense, (i) procure for SEAKR the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) accept return of the Product or terminate SEAKR's license to use the infringing Product and grant SEAKR a full credit of the purchase price of such product(s).

#### **14. Language**

SELLER agrees that the authorized language for any and all documentation that is to be exchanged between the parties in the performance of this Order shall be the English language.

#### **15. Limitation of Liability**

SEAKR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE ORDER.

#### **16. Materials**

The product to be delivered hereunder shall consist of new materials, not used, reconditioned, remanufactured, or of such age as to impair its useful life or safety. SELLER shall perform appropriate due diligence to identify the use of Conflict Minerals and report results upon request.

#### **17. Order of Precedence**

Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (i) Face of the Order, Order Changes and applicable continuation sheets including any Special Provisions; (ii) these General Terms and Conditions; (iii) Statement of Work; and (iv) Specifications (including but not limited to Source Control Drawings (SCD)) and/or SEAKR drawing.

#### **18. Packaging and Shipping**

(a) Unless otherwise specified, Product is to be packed in accordance with SELLER's best commercial practice.

(b) A complete packing list shall be enclosed with all shipments, including the SEAKR Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. If applicable, SELLER shall mark containers or packages with necessary lifting, loading and shipping information. Bills of lading shall include the Order number.

(c) Unless otherwise specified in the Order, delivery shall be FOB Destination.

#### **19. Payments**

(a) SELLER's invoices shall be submitted electronically to: [accounts.payable@seakr.com](mailto:accounts.payable@seakr.com) and shall include the Order

number, manufacturer's part number, SEAKR part number (if available), and part description.

(b) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) SEAKR's receipt of the SELLER's proper invoice; (ii) scheduled delivery date of the product or service; or (iii) actual delivery of the product or service.

(c) SEAKR shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Order or any other Order between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing SEAKR's payment.

(e) SELLER's invoice submittal to SEAKR certifies that all materials, services, labor, and equipment used in the performance of the Order have been paid per the terms of the applicable Order and are free of any liens as of the invoice date.

## **20. Price and Delivery**

(a) Unless otherwise stated in this Order, prices specified include all federal, state, and local taxes. SELLER warrants that the price of all product or services set forth herein does not exceed that price which is charged by SELLER to any other commercial customer purchasing similar services or product of like quantity, quality, and circumstance. Prices shall not include any taxes, burdens, or other charges for which SEAKR has furnished SEAKR's tax exemption information.

(b) Time is of the essence. Deliveries are to be made according to the quantities, dates, and times specified in the Order. SELLER shall notify SEAKR upon learning of any actual or potential delay in meeting the delivery schedule. If, for any reason, SELLER does not comply with SEAKR's delivery schedule, SEAKR, may, at its option and without liability, approve a revised delivery schedule or cancel this Order. If SELLER's shipment is late, SELLER shall pay the cost difference between the specified shipping method and the actual expedited rate.

## **21. Product Changes**

SEAKR has relied upon the product description and the process definition in issuing this Order to SELLER. SELLER may without notice, incorporate changes to the Products that do not alter form, fit, or function. SELLER shall notify SEAKR in the event of a form, fit or function change to the product ordered in this Order. Seller shall notify SEAKR in advance of any changes in venue and/or impact product ordered including but not limited to changes in equipment used for production/fabrication, location of manufacture, key material sourcing changes, materials of manufacture, changes to product qualification status, and product related industry alerts or findings. This requirement also applies to changes imposed upon the SELLER by their respective sub-tier suppliers. To the extent that such a change modifies the product(s) in this Order, SEAKR shall have the right to approve such change.

## **22. Proprietary Information**

(a) The parties agree to comply with the terms of any Non-Disclosure Agreement with SEAKR and to comply with all Proprietary Information marking and restrictive legends

(b) SELLER agrees not to use any SEAKR provided information for any purpose except for the express performance of this Order.

## **23. Publicity**

Without SEAKR's written approval, SELLER shall not, and SELLER's subcontractors of any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same, regarding this Order or program to which it pertains.

## **24. Quality Control System**

(a) SELLER shall provide and maintain a quality control system to an industry-recognized Quality Standard and in compliance with any other specific quality requirements identified in this Order.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to SEAKR and its customers.

(c) SEAKR reserves the right to audit SELLER's quality control system. Once SELLER's system is approved by SEAKR, SELLER agrees to notify SEAKR in advance with regards to any changes in facility location, processes, or procedures that may affect the quality system.

## **25. Record Retention**

SELLER shall retain all records to this Order for seven (7) years from the date of final payment received by SELLER unless an alternative period is specified in the Order. Records related to this Order include, but are not limited to, quotation, purchasing, financial, specifications, manufacturing/production, inspection, test, quality, shipping, and export/certification records. SELLER records related to this Order shall be available to SEAKR and its customers.

## **26. Responsibility for Claims / Indemnity**

SELLER shall, at its own expense, defend, indemnify and hold harmless SEAKR from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of SELLER, its subcontractors, agents, or employees in the performance of this Order. If SELLER fails to defend, hold harmless, and indemnify SEAKR as provided in this clause, then SELLER shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by SEAKR in the defense of any action under this clause and/or in the prosecution of any action to enforce the provisions of this clause.

## **27. Right of Access**

SEAKR, its customer(s) and applicable regulatory authorities shall have the right to access all SELLER facilities involved in the Order and to all applicable records at no additional cost.

## **28. SEAKR Furnished Property**

(a) SEAKR may provide to SELLER property owned by either SEAKR or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Order.

(b) Title to Furnished property shall remain in SEAKR or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to identify its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify SEAKR of any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At SEAKR's request, and/or upon completion of this Order, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SEAKR.

### **29. Stop Work**

(a) SEAKR may direct the SELLER in writing to Stop Work for up to ninety (90) days, or for such longer period of time as the parties may agree and SELLER shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Before the expiration of such period, SEAKR shall either terminate in accordance with the provisions of this Order or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause may be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that any claim for equitable adjustment is made within twenty (20) days after the date of the continuation.

### **30. Subcontracting**

(a) SELLER shall not subcontract services or product without the prior written authorization of SEAKR. This is not a restriction on purchases from authorized distributors, dealers, jobbers, or industrial suppliers.

(b) To the extent that SELLER utilizes sub-tier suppliers in the performance of this Order, the SELLER shall flowdown all applicable requirements in the Order, including, but not limited to the obligations in this Commercial Terms and Conditions.

### **31. Survivability**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Order, including but not limited to (i) Applicable Law; (ii) Company and Employee Status; (iii) Export Control; (iv) Independent Contractor Relationship; (v) Proprietary Information; (vi) Intellectual Property; (vii) Publicity; (viii) Limitation of Liability and (ix) Warranty, shall survive the expiration or termination of this Order.

### **32. Termination**

SEAKR shall have the right to cancel this Order or any part thereof at any time:

(a) Without Cause – In case of cancellation by SEAKR of all or any part of this Order without cause, SELLER shall be entitled to its cost already incurred in the performance of the work canceled, plus a reasonable profit on such costs, which together may not exceed the Order price of the work canceled. Any cancellation claim must be submitted to SEAKR within thirty (30) days after the effective date of cancellation. The provision of this subparagraph shall not limit or affect the right of SEAKR to cancel this Order for breach of contract and shall not apply to a breach of contract.

(b) With Cause - If SELLER fails to perform, or ignores written notification that SEAKR considers the SELLER to be

in default, SEAKR may, within thirty (30) days of providing that written notification, and in addition to any other right or remedy provided by this Order or by law, cancel all or part of the Order by written notice to SELLER without liability.

### **33. U.S. Government Contract**

If this Order is issued under a government contract or subcontract, as indicated in the Order, all necessary General Provisions of the Federal Acquisition Regulation (FAR), including the FAR clauses listed in 'Part 3 – CERTIFICATIONS, REPRESENTATIONS, AND FAR FLOWDOWN PROVISIONS', shall apply, as applicable.

### **34. Waiver & Severability**

If either party fails to enforce any provision of this Order, that provision and all others shall continue in full force and effect. If any provision of this Order is found to be illegal or otherwise unenforceable by any court of other judicial or administrative body, the other provisions of this Order shall not be affected, and shall remain in full force and effect.

### **35. Warranty**

SELLER hereby warrants that its Products shall be free from defects in material and workmanship for a period of twelve (12) months (unless a longer period is included in the SELLER's proposal or standard terms) from the date of delivery. In the event any defects in material and/or workmanship are discovered, SEAKR shall promptly notify the SELLER in writing of such defects. The repair or replacement shall be at the discretion of SEAKR. All packaging and transportation (prepaid) cost to return the defective product and provide repaired or replacement products to SEAKR shall be the responsibility of the SELLER.

## **Part 2 – T&M, CONTRACT LABOR, AND SERVICES PROVISIONS**

This part contains provisions that apply in addition to those in part 1 if the Order is a Time & Material (T&M) contract type, the Order is for contract labor, or the Order is for predominantly Services.

### **36. Background Investigation**

(a) If SELLER or its personnel will have access to SEAKR's systems or will be providing Services on SEAKR premises, prior to SELLER commencing performance under the Order, SELLER shall conduct a background investigation, consisting of a criminal convictions check and a citizenship verification, on SELLER personnel. If there are no findings then a SELLER will notify SEAKR that the background investigation was completed with no unfavorable or adverse findings. If there are investigation findings, any unfavorable/adverse information discovered in the background investigation will be reported to SEAKR's Human Resource Department.

(b) SEAKR shall have the ultimate and sole determination as to whether the investigation report contains "unfavorable/adverse information" and whether SELLER's personnel or SELLER is eligible to work on SEAKR's premises.

### **37. Insurance Waiver – Sole Member LLC**

If, at the time of the Order and throughout the entire performance thereof, SELLER is an individual doing business as an LLC, SEAKR waives the Insurance clause requirements to the extent that the SELLER solely performs the Services. In

consideration of this waiver, SELLER waives any claims that would have been covered by Worker's Compensation and Employer's Liability insurance or other insurance.

### **38. Hiring of an Assigned Employee by SEAKR**

For contract labor Orders, SEAKR may desire to hire the contract laborer directly and the parties agree that SEAKR shall have this right. If the contract laborer has been providing services for 1,000 straight time hours or longer under the Order or combination of Orders, the contract laborer may be converted to SEAKR's payroll without any further obligation. Should conversion occur prior to completion of 1,000 hours during this assignment SEAKR hereby agrees to pay SELLER twenty percent (20%) of the contract laborer's annual salary. This percentage is reduced four percent (4%) of the contract laborer's annual salary for every 200 straight time hours worked by the contract laborer.

### **39. Liaison Responsibilities**

SEAKR shall be solely responsible for all liaison and coordination between SEAKR and its customer as it affects the agreement between SEAKR and the customer, as well as on all matters pertaining to this Order by and between SEAKR and the SELLER, any associated contractors, and any designated SEAKR subcontractors.

### **40. Non-Solicitation – Business**

In consideration of the commitment made by SEAKR in this Order, SELLER shall not, either alone or in association with others solicit, entice or encourage any organization directly or indirectly controlled by SELLER, any customer, supplier, licensee or business relation of SEAKR to cease doing business with SEAKR, or in any way interfere with the relationship between any customer, supplier, licensee for a period of five (5) years.

### **41. Seller's Employees**

(a) SEAKR may, at its sole discretion, have SELLER remove any specified employee of SELLER from SEAKR's premises and request such employee not be reassigned under this Order.

(b) SELLER shall promptly notify SEAKR and provide a report of any accidents or security incidents involving loss or misuse or damage to SEAKR's intellectual or physical assets.

(c) SELLER and SELLER's personnel shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances where the Order is performed. SELLER agrees to defend, hold harmless, and indemnify SEAKR from and against any noncompliance by SELLER with

respect to laws, rules, regulations and orders as may be applicable.

(d) SELLER shall ensure SELLER's personnel are aware of their contribution to product or service conformity, their contribution to product safety, and the importance of ethical behavior.

### **42. Services Warranty**

SELLER warrants that the Services furnished to SEAKR under the Order will (i) conform in all material respects with the requirements of the Order; (ii) be performed using SELLER personnel that have the requisite knowledge, training, skills, experience, qualifications, and resources necessary to provide and perform the Services; (iii) be performed in accordance with the then prevailing applicable laws; and, (iv) be performed in a prompt, diligent, and professional manner consistent with industry standards and practices.

### **43. T&M and Contract Labor Invoices**

(a) In addition to the requirements listed in the Payments clause, SELLER shall also include a summary of work performed by each SELLER employee, labor hours charged by employee per assigned project, and total labor hours for the billing period for T&M or contract labor Orders, as applicable. Fractional parts of an hour shall be payable on a prorated basis. At SEAKR's discretion, SEAKR may directly reimburse the SELLER or the its employee for any out-of-pocket expenses that SEAKR may authorize.

(b) The funds obligated on the face of the Order are contemplated to cover the period of performance. If at any time within the period of performance SELLER considers the allotted inadequate to cover the work to be performed through the end of the period of performance, the SELLER shall notify SEAKR in writing when the SELLER's anticipated total estimated incurred costs to be expended within the next thirty (30) days will exceed seventy five percent (75%) of the presently allotted funds. SELLER's notification shall state the estimated amount of additional funds required to continue performance through completion of the period of performance.

### **44. Travel**

All travel shall be authorized in advance by SEAKR. If travel is authorized under the Order, SELLER's expenses may be reimbursable in accordance with the SEAKR travel policy then in effect at the time of the travel.

### Part 3 – CERTIFICATIONS, REPRESENTATIONS, AND FAR FLOWDOWN PROVISIONS

This part contains certifications and representations that are material statements of fact by the SELLER upon which SEAKR will rely upon in making awards to the SELLER. By submitting its written offer, or providing oral offers/quotations at the request of SEAKR, or accepting any Order, the SELLER certifies the certifications and representations as set forth below in this clause. These certifications shall be applicable whenever these terms and conditions are represented in any Order, agreement or other contractual document, or any quotations, request for quotation (oral or written), request for proposal solicitation (oral or written) issued by SEAKR. SELLER shall immediately notify SEAKR of any change of status with regard to these certifications and representations.

(1) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. SELLER certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Order. This certification and disclosure is a prerequisite for making or entering into this Order imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(2) FAR 52.209-5 Certification Regarding Responsibility Matters (i) SELLER certifies that, to the best of its knowledge and belief, that SELLER and or any of its Principals (as defined in FAR 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal Agency. (ii) SELLER shall provide immediate written notice to SEAKR if, at any time prior to award of any Order, it learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.

(3) FAR 52.222-22 Previous Contracts and Compliance Reports. SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity Clause (FAR 52.222-26), (i) SELLER has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(4) FAR 52.222-25 Affirmative Action Compliance. SELLER represents (i) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (ii) that in the event such a program is required, and does not presently exist, the SELLER will develop and place into operation such a written Affirmative Action Compliance Program within 120 days from the award of this Order.

### INCORPORATION OF FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

If the Order is in support of a US Government program or contract, the FAR clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any note following the clause citation, to this Order. If the date or substance of any of the clauses listed below is different than the date of substance of this clause actually incorporated in the applicable Prime Contract reference by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

#### Government Subcontract

This Order is entered into by the parties in support of a U.S. Government contract.  
As used in the clauses referenced below and otherwise in this Order:

1. “Commercial item” means a commercial item as defined in FAR 2.101.
2. “Contract” means this contract, order, or purchase order.
3. “Prime Contract” means the contract between SEAKR and the U.S. Government or between SEAKR and its higher-tier contractor who has a contract with the U.S. Government.
4. “Subcontract” means any contract placed by the SELLER or lower-tier subcontractors under this contract.

#### Changes Required by Prime Contract

SELLER agrees that upon the request of SEAKR it will negotiate in good faith with SEAKR relative to changes to this Order to incorporate additional provisions herein or to change provisions hereof, as SEAKR may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of changes to such Prime Contract. If any such change to this Order causes an increase or decrease in cost of, or the time required for performance of any part of the work under this Order, an equitable adjustment may be made pursuant to the “Changes” clause of this Order.

#### Preservation of Government Rights

If SEAKR furnished designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that SEAKR, acting on its own behalf, may modify or limit any rights the U.S. Government may have to authorize the SELLER’s use of such Furnished Items in support of other U. S. Government prime contracts.

The following FAR and DFARS Clauses are incorporated by reference.

FAR / DFARS Number	Title	Latest Update	Notes
52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES	JUL 2018	Applies to all Orders.
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	APR 2008	Applicable if a priority rating is indicated on the face of this Order.
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	APR 2015	Applicable if FAR 52.222-26 has been determined to apply to this Order.
52.222-26	EQUAL OPPORTUNITY	SEP 2016	Applicable unless exempted from Executive Order 11246 requirements.
52.222-50	COMBATING TRAFFICKING IN PERSONS	MAR 2015	
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA	JAN 1997	Applies if the Work involves hazardous material.
52.223-7	NOTICE OF RADIOACTIVE MATERIALS	JAN 1997	Applies to Work containing covered radioactive material. In the blank insert "30".
52.223-11	OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS	JUN 2016	Applicable if the Work was manufactured with or contains ozone depleting substances.
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	AUG 2011	
52.225-5	TRADE AGREEMENTS	AUG 2018	Applicable if the Work contains other than U.S. made or designated country end products as specified in the clause.
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008	
52.227-9	REFUND OF ROYALTIES	APR 1984	Applicable to Orders in which the amount of royalties reported during negotiation of the Order exceeds \$250.
52.227-19	COMMERCIAL COMPUTER SOFTWARE LICENSE	DEC 2007	Applicable if existing computer software is to be delivered under this Order.
52.245-1	GOVERNMENT PROPERTY	JAN 2017	Applicable if U.S. Government property is furnished to SELLER by SEAKR under the Order.
52.245-9	USE AND CHARGES	APR 2012	Applicable only if above clause 52.245-1 is applicable under the Order.
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS	FEB 2006	
252.246-7007	CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM	AUG 2016	Only paragraphs (a) through (e) of this clause are applicable. The introductory text is excluded.
252.246-7008	SOURCES OF ELECTRONIC PARTS	DEC 2017	Applicable if SELLER is not the original manufacturer.

The following FAR Clauses apply to all Orders where the value equals or exceeds \$3,500:

FAR Number	Title	Latest Update	Notes
52.219-28	POST AWARD SMALL BUSINESS REREPRESENTATION	JUL 2013	Applicable when Contract will be performed in the U.S.
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	OCT 2015	Applicable if the Order period of performance is 120 days or more.
52.225-1	BUY AMERICAN -SUPPLIES	MAY 2014	Applicable if the Work contains other than domestic components.



The following FAR Clause applies to all Orders where the value equals or exceeds \$10,000:

FAR Number	Title	Latest Update	Notes
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	DEC 2010	

The following FAR Clause applies to all Orders where the value equals or exceeds \$15,000:

FAR Number	Title	Latest Update	Notes
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	JUL 2014	

The following FAR Clause applies to all Orders where the value equals or exceeds \$30,000:

FAR Number	Title	Latest Update	Notes
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	OCT 2018	Applicable if SEAKR is the Prime Contractor.

The following FAR Clause applies to all Orders where the value equals or exceeds \$35,000:

FAR Number	Title	Latest Update	Notes
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	OCT 2015	Not applicable if the Order is for commercial off the shelf items.

The following FAR and DFARS Clauses apply to all Orders where the value equals or exceeds \$150,000:

FAR / DFARS Number	Title	Latest Update	Notes
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010	
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014	
52.215-23	LIMITATIONS ON PASS – THROUGH CHARGES	OCT 2009	For civilian agency prime contracts, applicable to cost reimbursement Orders that exceed the simplified acquisition threshold; and for DoD prime contracts, applicable to Orders that require certified cost or pricing data.
52.222-35	EQUAL OPPORTUNITY FOR VETERANS	OCT 2015	
52.222-37	EMPLOYMENT REPORTS ON VETERANS	FEB 2016	
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS	JUN 2016	
252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING	OCT 2016	

The following FAR and DFARS Clauses apply to all Orders where the value exceeds \$5,500,000:

FAR / DFARS Number	Title	Latest Update	Notes
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	OCT 2015	Applicable if the Order period of performance is 120 days or more.
252.203-7003	AGENCY OFFICE OF THE INSPECTOR GENERAL	DEC 2012	Applicable when FAR 52.203-13 applies to the Order.