

## **SUBCONTRACTOR TERMS AND CONDITIONS**

This entire agreement is described on the face of the Purchase Order and is made in full a part of this Subcontract award. Acceptance of the Purchase Order constitutes acceptance of these terms and conditions.

**Definition of Purchaser and Seller** - All references to Purchaser are Integrated Marine Services, Inc. (IMS). All references to Seller are determined to be Subcontractor.

**Acceptance Agreement:** Seller's commencement of work or shipment of goods/services (whichever comes first) shall be considered mode of acceptance of Agreement by the Seller. Any acceptance of this Subcontract is limited to acceptance of express terms and conditions. Additional or different terms or any attempt by Seller to vary in any degree any terms of Purchase Orders (PO's) issued under this Subcontract shall be deemed material and shall not operate as a rejection of the Seller's offer and are objected to, but this PO will not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods/requirements.

**Shipment:** If the delivery is not made on time, the rights of the Purchaser reserves full rights to cancel PO without Liability and, shall be at the cost of the Seller. If the Purchaser is required to expedite a required delivery date and it becomes necessary for the Seller to ship in a more expensive way than specified in the PO, any increased resultant costs shall be paid for by Seller unless the resultant necessity for rerouting or expedited handling is caused by the Purchaser.

**Force Majeure:** The Purchaser may delay acceptance or delayed delivery on occasions by causes beyond its control. Seller shall be responsible to hold such goods at the direction of the Purchaser. When cause affecting the delay is removed Seller shall deliver. Purchaser shall be held responsible only for Seller's direct added costs and only when implemented by Purchaser's request. Government action or failure thereof where action is required, strike or other labor trouble, fire, or unusually severe weather is considered to be causes beyond the Purchaser's control.

**Changes:** IMS (as deemed appropriate) shall have the right to make changes in drawings, designs, specifications, materials, packaging time and place of delivery and method of transportation. If this change increases/decreases the cost or time required for performance, an equitable adjustment by modification in writing to this Agreement shall be made. Accordingly, the Seller agrees to accept any such changes subject to changes cited in this paragraph.

**Pricing/Payments:** The Seller shall not provide pricing that is less favorable to the Purchaser than any offered currently to other customers. Accordingly, if the Seller reduces its prices during the time of this PO, the prices shall be adjusted correspondingly by the Seller. These referenced prices are applicable to charges for packaging, boxing, crating, special handling and F.O.B destination. No adjustment or modification of the stated price shall be done without the signed written agreement of Purchaser. In the event that PO does not cite price, the price will be the lower of the last quoted or paid or prevailing Market Price.

**Claims/Setoffs:** All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any transaction with Seller.

**Delivery and Risk of Loss:** Delivery shall be F.O.B. unless otherwise specified on the face of this PO. Shipping charges shall be shown on each individual invoice as a separate item and shall contain original or a copy of the bill indicating that payment by Vendor for shipping has been made, notwithstanding any agreement by Purchaser to pay freight or other transportation charges. Delivery is not complete until the goods have been actually received and accepted, the risk of loss or damage prior to completion of delivery shall be upon the Vendor, and any such loss or damage to goods or materials ordered hereunder shall not release Seller from any obligation hereunder. Purchaser reserves the right to refuse C.O.D. shipments.

**Warranty Clause:** Seller expressly warrants that all goods /services provided under this Agreement shall conform to all Specs & appropriate standards, will be new, and will be free from defects (latent or blatant) in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for goods/services, and that any goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. The warranty period shall be for ninety (90) days from the time of acceptance of material or workmanship. In the event the Seller holds a longer period of time, i.e., greater than the 90 days, the IMS period of time will be of the greater value. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods/services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller agrees to replace or correct defects of any goods/services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the

opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such correction or replace goods/services and charge Seller for the cost incurred by Purchaser.

**Indemnification:** The Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

**Inspection/Testing:** Nothing contained in this Subcontract shall relieve the Seller from the obligation of testing, inspection and Seller's Quality Control. Payment of deliverables (goods/services) shall not constitute acceptance thereof. The Purchaser reserves the right to inspect and reject any or all goods and is solely within the judgment of Purchaser whether products are defective or nonconforming. Excess quantities called for in PO will be returned to Seller at its expense, inclusive of any/all administrative burden thereto. In the event defects or nonconformities are not apparent on examination, the Purchaser reserves the right to require replacement, as well as payment of damages.

**Identification:** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this Subcontract shall contain the applicable Master Contract Number and PO number. Packing lists shall be visible in each and every box or package shipped pursuant to this Subcontract indicating the content of such boxes or packages.

**Waiver:** Purchaser's failure to insist on performance of any terms or conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any terms, conditions or privilege, whether of the same or similar type.

**Insurance Clause:** The Seller agrees that, in the event the Seller or its employees perform work on the Purchaser's or Purchaser's Customer property, the Seller is considered to be an independent contractor and that the work shall not be considered employees of the Purchaser. The Seller shall maintain all necessary insurance coverage's, including liability, Workers' Compensation insurance and USL&H. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

**Subcontracting:** The Seller shall not assign in whole or in part any of this Subcontract/PO without written consent of the Purchaser. This is a mandatory requirement and shall not deviate in any way from the IMS written consent.

**Termination:** Seller shall be liable for damages suffered by Purchaser resulting from Seller's breach of this contract. If a breach occurs by Seller, inclusive of all provisions of this Subcontract, Purchaser reserves the right to cancel and terminate this contract by either oral or written notice.

**Limitation of Purchaser's Liability - Statute of Limitations:** In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods/services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods/services delivered hereunder must be commenced within one year after the cause of action has accrued.

**Severability:** If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.

**CLAUSES APPLICABLE TO SUBCONTRACTOR(S) PO TERMS & CONDITIONS (Also see Exhibit A, Mandatory Flow Down Clauses Pages 1 thru 2):**

**Taxes:** Purchaser agrees to pay all state sales or use taxes unless indicated on the face of the Order. Vendor will not charge Federal excise taxes. Upon acceptance of goods or materials, Purchaser will furnish the Seller an exemption certificate.

**Bankruptcy:** Purchaser shall be entitled to cancel any unfilled part of this Order without any liability whatsoever if any proceeding, voluntary or involuntary bankruptcy or, an assignment by creditors is received with or without Seller's consent.

**Antitrust Assignment Clause:** Vendor acknowledges that overcharges by Seller are borne by the Purchaser. Therefore, Seller agrees to assign to Purchaser any/all claims which it may have for overcharges, for all purchases in connection with any contract between Purchaser and Seller, arising out of antitrust or similar actions, except overcharges that have commenced after the price is established under any contract between Purchaser and Vendor and which are not passed on to the Purchaser under an escalation clause.

**Reporting Executive Compensation and First Tier Subcontract Awards (July 2010):** FAR Clause 52.204-10 is incorporated into this Subcontract as if set in full text. (See FAR Clause 52.204.10)

**Security Requirements:** All Government premises owned and operated by the US Government inclusive of grounds, and facilities are Government Property and shall adhere to the Mandatory Clause FAR 52.204-2 as cited in Exhibit A. In addition, Subcontractor Clauses as described herein shall be made a part of this subcontract award and set in full force. All persons entering into this agreement must comply with the IMS and or Government security requirements.

The agency for which IMS is performing requirements will issue ID Badges to the subcontractor employees and it is the responsibility of the Subcontractor to obtain ID Badges from the appropriate personnel at IMS. Entry will not be permitted under any circumstances without ID Badges, which must be displayed at all times. In order to obtain badges the subcontractor must have a host such as IMS (Prime Contractor) performing requirements for the Department of Defense (DOD).

Subcontractor employees parking are to park in the general parking lot outside the main gate unless the subcontractor requires access to park inside the main gate. In this instance, a request must be made through IMS stating a valid reason for this special need who will present it to the Government for approval. If approved, the Government Agency Security will issue a 'parking pass'. It is noted that neither the IMS nor the Government is liable for automotive damage(s) while vehicle is on base given that special parking privileges/parking passes are granted. Parking is at the Subcontractor(s) own risk.

The Subcontractor holds full responsible for the conduct of their employees at all times. The Subcontractor shall immediately be removed and reported to IMS when removal action is taken. Reasons for unacceptable conduct are inclusive of but not limited to: disruption of operations, creating an unsafe working environment, any act of violence, attempting or bringing a weapon including harmful chemicals/chemical irritants on-site. Weapons are defined as bladed instruments, firearms/spring-loaded mechanism or explosives. Any person(s) violating any Security as described herein shall be reported to law enforcement as deemed appropriate.

No person may possess or be under the influence of intoxicates including alcoholic beverages, intoxicating inhalants or any controlled substance identified in 21CFR 1300-1

**Equal Opportunity:** Vendor agrees to comply with all laws prohibiting discrimination against any employee or applicant for employment as prescribed in Federal Regulations including Title VII of the Civil Rights Act of 1964 as amended, Executive Orders 10925, 11141 and 11246 as amended. Sections 402 & 503, the regulations at 41 C.F.R. Parts 60-1 through 60-60, 60-250 and 60-741, and ASPR 12-802 as modified by ASPR-12-803m which is part of hereof by reference. (See FAR Clause 52.222.26)

**Compliance:** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations, including EEO and Affirmative Action, to which they are subject. Evidence by delivery may be required to effect compliance. All laws and regulations required in agreements of this character are incorporated by this reference, as applicable, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, 12086, 13201 (including 29 CFR Part 470), as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts. **Without exception**, all Mandatory Flow Down Clauses are hereby passed to the Subcontractor and shall be followed with strict adherence. **Exhibit A provides the Subcontractor a list of "Mandatory Flow Downs (in dollar threshold order)"**.

**Termination for Convenience (T/C) of Purchaser:** Purchaser reserves the right to terminate this or any part of this Subcontract or PO's issued hereunder for its sole convenience. In the event this action is necessary, the Seller shall immediately stop all work and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable charge for termination which is a percentage of the Subcontract/PO price reflecting the percentage of work performed prior to the notice of termination. This will include actual direct costs resulting from termination. Accordingly, Seller shall not be paid for work after receipt of termination notice, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

**Termination for Default (T/D) of Purchaser:** In the event of T/D (or cause), the Purchaser shall not be liable to Seller for any amount and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination. This T/D is caused by the Seller's non-compliance with the Subcontract contents. This 'cause', but not limited to late deliveries, deliveries of products which are defective or which do not conform to this Subcontract or PO's issued thereunder, and failure to provide Purchaser, upon request, of reasonable assurances of future performance shall be causes allowing Purchaser to Terminate for Default.

**Proprietary Information – Confidentiality-Advertising:** Seller agrees that all information provided by the Purchaser shall be confidential. Seller shall not disclose any information relative to or contained in this subcontract other than is required for performance of same **unless** written permission is given to do so by IMS. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller

for Purchaser in connection with this order. All drawings, specification, or other documents prepared by Seller developed under this Subcontract shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the Subcontract be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto, except such rights as may exist under Patent Laws. Accordingly, any development(s) as a result of the end item(s) related to the Subcontract/PO's are property of the Government with the exception of Patent Laws.

**Patents:** Seller assumes full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement. The foregoing is all inclusive of alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Seller agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits, and damages, including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller.

**Entire Agreement:** This Subcontract, inclusive of PO's issued hereunder, and any Special Provisions referred to on the face hereof, constitute the entire agreement between the parties.

**Governing Law:** The laws of the state in which this contract/subcontract/PO was awarded shall govern and the right and the obligations of the parties hereunder, and the venue of any action brought hereunder shall be in the Superior Court, County of San Diego and State of California and/or the State of Hawaii, wherever requirements are being performed.

	<b>MANDATORY FLOW DOWN CLAUSES</b> (in dollar threshold order)	
<b>FAR Reference</b>	<b>Title</b>	<b>Dollar Threshold</b>
	<b>PART I - CLAUSES</b>	
52.204-2	Security Requirements	All, if in prime
52.216-7	Allowable Costs and Payments Clause	All, if in prime
52.232.x	Payments	All, if in prime
52.225-13	Restrictions on Certain Foreign Purchases	All
52.222-26 *#	Equal Opportunity	All >\$10K aggregate
52.222-21	Prohibition of Segregated Facilities	All if subject to 52.222-26
52.233-4	Applicable Law for Breach of Contract Claim	All
52.203-13 52.203-14	Contractor Code of Business Ethics and Conduct	>5,000,000 (excludes commercial item award and performance under 120 days)
52.222-41	Service Contract Act of 1965, as amended	>\$2,500, if in prime contract
52.222-36 *#	Affirmative Action for Workers with Disabilities	>\$10,000
52.244-6 *	Subcontracts for Commercial Items (and commercial components)	>\$10,000 (44.403 indicates ALL for non-commercial contracts)
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	>\$30,000
52.222-35 *#	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	>\$100,000
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	>\$100,000
52.202-1	Definitions	>\$100,000
52.203-5	Covenant Against Contingent Fees	>\$100,000
52.203-6	Restrictions on Subcontractor Sales to the Government	>\$100,000
52.203-7 , except Paragraph (c)(1)	Anti-Kickback Procedures	>\$100,000
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	>\$100,000 (while not mandatory by FAR, this protects EG&G)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	>\$100,000
52.215-2	Audit and Records – Negotiation	>\$100,000
52.223-14, except paragraph (e)	Toxic Chemical Release Reporting	>\$100,000
52.227-1	Authorization and Consent	>\$100,000
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	>\$100,000
52.248-1	Value Engineering	>\$100,000
52.219-8 *	Utilization of Small Business Concerns	>\$100,000
52.222-39	Notifications of Employee Rights Concerning Payment of Union Dues or Fees	>\$100,000
52.219-9	Small Business Subcontracting Plan	>\$550,000 and Large Business
52.230-2, except paragraph (b)	Cost Accounting Standards	>\$650,000 unless CAS exception applicable
52.230-3 except paragraph (b)	Disclosure and Consistency of Cost Accounting Practices	>\$650,000 unless CAS exception applicable
52.222.50	Combating Trafficking in Persons	All (except commercial items)
52.222.24	Pre-Award On-site Equal Opportunity Compliance Evaluation	>\$10M

<b>FAR Reference</b>	<b>Title</b>	<b>Dollar Threshold</b>
52.230-6	Administration of Cost Accounting Standards	>\$650,000 unless CAS exception
52.215-10	Price Reduction for Defective Cost or Pricing Data	>\$650,000
52.215-11	Price Reduction for Defective Cost or Pricing Data - Modifications	>\$650,000
52.215-12	Subcontractor Cost or Pricing Data	>\$650,000
52.215-13	Subcontractor Cost or Pricing Data - Modifications	>\$650,000
52.215-15	Pension Adjustments and Asset Reversions	>\$650,000
52.215-18	Reversions or Adjustments of Plans for Post Retirement (PRB) Other than Pensions	>\$650,000
52.215-19	Notifications of Ownership Changes	>\$650,000
52.219-1	Small Business Program Representations	>\$3,000
52.222-22	Previous Contracts and Compliance Reports	>\$10,000
52.209-5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters	>\$30,000 (note: the prescription for this dollar threshold is at 52.209-6(b))
52.222-38	Compliance with Veterans' Employment Requirements	>\$100,000
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	>\$100,000
52.223-13	Certification of Toxic Chemical Release Reporting	>\$100,000
52.230-1	Cost Accounting Standards Notices and Certification	>\$650,000
52.222-24	Pre-award On-Site Equal Opportunity Compliance Evaluation	>\$10,000,000

**Notes:**

- (1) All dollar amounts are inclusive, for example “>\$100,000” means “greater than or equal to \$100,000”.
- (2) This list assumes that the relevant FAR clause is, in fact, in the prime contract.
- (3) The Clauses in Part I generally should appear in Section I of the Subcontract. The Provisions in Part II should generally appear in Section K of the subcontract (or in a Representations & Certifications package).
- (4) Provided FAR 52.244-6 is in the prime contract, asterisked (\*) clauses are all that must be flowed down to subcontracts for Commercial Items under non-commercial prime contracts (together with the minimal additional clauses necessary for EG&G to satisfy its contractual obligations). Clauses not asterisked need not be flowed down for Commercial Items.
- (5) Provided FAR 52.212-5 is in the prime contract, clauses with the pound character (#) plus 52.222-41, if applicable, are all that must be flowed down to a subcontractor (together with the minimal additional clauses necessary for EG&G to satisfy its contractual obligations).
- (6) Be sure to flow down Service Contract Act and Davis Bacon Act related clauses and Wage Determinations if contained in the prime contract.