

**TMT INTERNATIONAL OBSERVATORY LLC (“TMT”)**  
**SECTION 1 – Commercial Terms and Conditions**  
**COMMERCIAL ITEMS OR SERVICES CONTRACT**  
**GENERAL PROVISIONS**

GENERAL PROVISION TITLE	PAGE
Affirmative Action for Handicapped Workers .....	3
Affirmative Action for Special Disabled and Vietnam Era Veterans .....	3
Amendment to Contract .....	3
Asbestos Notification.....	3
Authority of TMT Representatives and Required Notices .....	3
Buy American Act - Supplies.....	4
Clause Headings .....	4
Collusion & Gratuities.....	4
Compliance with Export Regulations.....	4
Confidential Information .....	4
Definitions.....	4
Disputes .....	6
Drafters.....	6
Drug-Free Workplace Requirements .....	6
Electrical Equipment Acquisition .....	6
Excusable Delays .....	6
Entire Agreement .....	6
Existing Commercial Computer Software - Licensing.....	6
Facsimile Copies Acceptable .....	7
Hazardous Material Identification and Material Safety Data.....	7
Inspection and Acceptance .....	7
Insurance and Indemnification .....	8
Mutual Non-Waiver .....	8
New Material .....	9
Notice of Radio Active Materials .....	9
Order of Precedence.....	9
Ownership .....	9
Payments and Discounts.....	10
Release of Information .....	10
Responsibility for Supplies .....	10
Shipping .....	10
Taxes.....	10
Termination for Cause .....	11
Termination for Convenience – Fixed Price .....	11
Waiver .....	11
Warranty for Commercial Items .....	11

(See Page 2 for Individual General Provision Applicability)

## **APPLICABILITY OF INDIVIDUAL GENERAL PROVISIONS**

### **APPLICABLE TO ALL TRANSACTIONS**

Amendments to Contract	New Material
Authority of TMT Representatives and Required Notices	Order of Precedence
Clause Headings	Ownership
Collusion & Gratuities	Payments and Discounts
Confidential Information	Release of Information
Disputes	Responsibility for Supplies
Definitions	Shipping
Drafters	Taxes
Drug-Free Workplace Requirements	Termination for Cause
Entire Agreement	Termination for Convenience
Excusable Delays	Validity
Facsimile Copies Acceptable	Waiver
Inspection and Acceptance	Warranty for Commercial Items

### **FAR STATUTES OR EXECUTIVE ORDERS APPLICABLE IF SPECIFIED ON FACE OF ORDER**

Affirmative Action for Handicapped Workers  
Affirmative Action for Special Disabled and Vietnam Era Veterans  
Buy American - Supplies

### **APPLICABLE WHEN CONTRACTOR (SELLER) WORKS AT TMT SITE**

Asbestos Notification  
Insurance and Indemnification  
TMT Drug-Free Workplace Requirements

### **APPLICABLE IN SPECIAL CIRCUMSTANCES ACCORDING TO THEIR TERMS**

Compliance with Export Regulations  
Electrical Equipment Acquisition  
Existing Commercial Computer Software - Licensing  
Hazardous Material Identification and Material Safety Data  
Insurance and Indemnification  
Mutual Non-Waiver  
Notice of Radioactive Materials

### **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**

(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

### **AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS**

(This Article applies to contracts over \$25,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

### **AMENDMENT TO CONTRACT**

This Contract may be modified, amended or waived only by written consent of the both parties.

### **ASBESTOS NOTIFICATION**

(This Article applies if any of the Contract effort will be performed in TMT-Pasadena buildings.)

Contractor agrees to coordinate with TMT for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in TMT controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in TMT-Pasadena buildings.

### **ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES**

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date TMT receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
  - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to TMT, Attn: Accounts Payable.
  - (4) If a party other than the Contractor provides TMT with a notification that the amount due or to become due under this Contract has been assigned and that payment is to be made to the claimed assignee, TMT may withhold any payments which are due and payable under the Contract until TMT is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
  - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless TMT authorizes such action in writing.
  - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by TMT in accordance with the provisions of paragraph (c) below.
- (c) The Contractor agrees that it will delegate no part of the duties required of it by this Contract without the prior written consent of TMT; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts," if any.

### **AUTHORITY OF TMT REPRESENTATIVES AND REQUIRED NOTICES**

- (a) No order, notice, or direction received by the Contractor and issued pursuant to this Contract, shall be binding upon either the Contractor or TMT, unless issued or ratified in writing by the TMT Project Manager, the TMT Business Manager or by representative(s) designated in writing by either of them.

- (b) Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to TMT shall be directed to the TMT Project Manager, the TMT Business Manager or to the representative(s) designated in writing by either of them.

## **CLAUSE HEADINGS**

The clause headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the clauses to which they appertain.

## **COLLUSION & GRATUITIES**

Seller warrants that it has not engaged in collusion with any other potential sellers to secure this Contract. Seller further warrants that no benefits of tangible value have been requested by any of TMT's agents or employees as a condition of awarding this Contract; and that no benefits of tangible value have been given, or will be given to any of TMT's agents or employees as a result of being awarded this Contract.

## **COMPLIANCE WITH EXPORT REGULATIONS**

Contractor warrants that it shall fully comply with all U.S. export control laws and regulations in the performance of this contract and shall obtain appropriate export licenses or other export authority as may be required before exporting any controlled hardware, software or data.

## **CONFIDENTIAL INFORMATION**

Seller shall keep confidential and shall not disclose to others or use in any way to the detriment of TMT, confidential business or technical information that TMT may disclose in conjunction with this Contract, or that seller may be exposed to as a result of entering TMT's premises to deliver goods, machinery or equipment, or to perform work. Confidential business or technical information shall be defined as any information not generally available to the public.

## **DEFINITIONS**

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "account manager" shall refer to the contact assigned by the seller to represent it in all manner of dealing with buyer.
- (b) The term "buyer" shall refer to the TMT Observatory Corporation.
- (c) The term "commercial component" means any component that is a commercial item.
- (d) The term "commercial item" means (see related term "nondevelopmental item" below):
  - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:
    - (A) Has been sold, leased, or licensed to the general public; or
    - (B) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (d)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (d)(1) or (2) of this Article, but for:
    - (A) Modifications of a type customarily available in the commercial marketplace; or
    - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet TMT or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (d)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (d)(1), (2), (3), or (4) of this Article, and if the source of such services:

- (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
  - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  - (7) Any item, combination of items, or service referred to in subparagraphs (d)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
  - (8) A nondevelopmental item, if TMT Buyer determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below)
- (e) The term "component" means any item supplied as part of an end item or of another component.
  - (f) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
  - (g) The term "Contracting Officer" is synonymous with term "TMT Negotiator."
  - (h) The term "Contractor" or "Seller" means the selling party to this Contract/Order with TMT being the buying party.
  - (i) The term "electronic commerce" shall refer to an Internet-based program whereby buyer can obtain pricing and place orders via computer.
  - (j) The term "equipment" refers to the hardware components of goods and includes the media on which software is loaded.
  - (k) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
  - (l) The term "goods" shall refer to items or products purchased by buyer from seller, "goods" are further described in Exhibit A.
  - (m) The term "Government" means the Government of the United States of America, unless the context is otherwise.
  - (n) The term "TMT" means the TMT Observatory Corporation as a party to this Contract.
  - (o) The term " TMT negotiator" or "TMT Negotiator" means the individual authorized to issue and administer this Contract for TMT.
  - (p) The term "nondevelopmental item" means:
    - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
    - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
    - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
  - (q) The term "order" shall refer to any purchase transaction occurring under this Contract.
  - (r) The term "person" means any individual, partnership, corporation, association, institution or other entity.
  - (s) The term "Schedule" means the statements in the order/contract including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions") , and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
  - (t) The term "services" shall refer to the activities required in the delivery, installation, and/or maintenance of goods.
  - (u) The term "software" refers to programs capable of operating on a computer, processor or controller offered in this Contract.
  - (v) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
  - (w) The term "support" refers to equipment maintenance and repair, software updates, maintenance and support services, consulting, training, and other support services offered by seller.
  - (x) The terms "United States" or "U.S." mean the United States of America.

- (y) The term "Year 2000 Compliance" shall refer to the ability of goods to accurately process date/time (including but not limited to, calculation, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations.

### **DISPUTES**

- (a) Any dispute or claim arising out of, in connection with, or relating to this contract shall be submitted for resolution to ascending levels of management of the parties through appropriate Division level. If the dispute cannot be resolved after such extensive negotiations, either party may pursue any appropriate legal recourse in the State of California not inconsistent with the provisions of this Contract.
- (b) Pending any decision, appeal or judgment or the settlement of any dispute, Seller agrees to proceed diligently with the performance of the requirements of this Contract.

### **DRAFTER**

Neither party, nor its respective counsel, shall be deemed the drafter of this Contract for purposes of construing the provisions hereof. The language in all parts of this Contract shall in all cases be construed according to its fair meaning, and not strictly for or against either party.

### **DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon TMT premises, that TMT's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with TMT's policy of maintaining a drug-free workplace.

### **ELECTRICAL EQUIPMENT ACQUISITION**

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by TMT or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by TMT or its designees to comply with this Article.

### **ENTIRE AGREEMENT**

*This Contract embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this Contract; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.*

### **EXCUSABLE DELAYS**

The Contractor shall be liable for default, unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify TMT in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to TMT of the cessation of such occurrence.

### **EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING**

(This Article is applicable to the acquisition of any existing commercial computer software under this Contract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws and FAR, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.
- (b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the

computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.

- (c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to TMT, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
  - (1) The commercial computer software may not be used, reproduced, or disclosed by TMT or the Government except as provided below or otherwise expressly stated in the Purchase Order/Contract.
  - (2) The commercial computer software may be:
    - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or TMT in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
    - (B) Reproduced for safekeeping (archives) or backup purposes;
    - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
    - (D) Disclosed and reproduced for use by Government or TMT contractors or their subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or TMT's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
  - (3) If the incorporated Vendor's/Contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
  - (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, TMT, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.
  - (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Contract in accordance with the terms of this Contract.

#### **FACSIMILE COPIES ACCEPTABLE**

The parties agree that facsimile (fax) copies of contract documents are just as binding as originally executed documents.

#### **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Contract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with TMT negotiator and adding TMT with the Government in all respects including safety and rights to data.)

#### **INSPECTION AND ACCEPTANCE**

- (a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. TMT reserves the right to inspect or test any supplies or services that have been tendered for acceptance. TMT may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Contract requirements. TMT must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

- (b) The Contractor shall remove supplies rejected or required to be corrected. However, TMT may require or permit correction in place promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (c) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, TMT may either (i) by Contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (ii) terminate the Contract for default as provided in the Article of this Contract entitled "Termination for Cause." Unless the Contractor corrects or replaces the supplies within the delivery schedule, TMT may require their delivery and make an equitable price reduction.
- (d) Inspections and tests by TMT do not relieve the Contractor of responsibility for defects or other failures to meet Contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as regards TMT's rights under any warranty or guarantee, or as otherwise specified in this Contract.
- (e) No variation in quantity will be accepted unless caused by conditions of loading, shipping, packing or allowances in manufacturing process. No payment for extras will be made unless such extras and the price thereof are authorized in writing by the Buyer.

## **INSURANCE AND INDEMNIFICATION**

(Contracts are exempt for work performed outside the United States.)

- (a) This Article is applicable if:
  - (1) The performance of this Contract includes activities which could endanger non-Contractor personnel and such activities are performed at a location which is not secured by appropriate Contractor-controlled access restrictions; or
  - (2) This Contract requires work on a Government installation or premises under the control of TMT, unless:
    - (A) All such work is to be performed outside the United States, its possessions, or Puerto Rico.
- (b) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with TMT named as an additional insured in policies for comprehensive liability insured with a carrier and admitted in the State of California.
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (c) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming TMT as an additional insured to the contract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to TMT, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by TMT. The Contractor agrees to permit TMT to examine its original policies, should TMT so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, TMT shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (d) Indemnification. The Contractor agrees that it will be responsible to TMT for, and will indemnify and hold harmless TMT and its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such



act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of TMT, its trustees, officers or employees.

(e) Subcontracts.

- (1) The Contractor shall insert the substance of this Article, including this paragraph (e), in subcontracts under this Contract if:
  - (A) The performance of the subcontract includes activities which could endanger non-subcontractor personnel and such activities are performed at a location which is not secured by appropriate subcontractor-controlled access restrictions; or
  - (B) This subcontract requires work on a Government installation or premises under the control of TMT, unless:
    - (i) Only a small amount of work is required on the Government installation or TMT-controlled premises; or
    - (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
- (2) At least five days before entry of each such subcontractor's personnel on TMT-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to TMT a current certificate of insurance meeting the requirements of paragraph (c) above, for each such subcontractor.

**MUTUAL NON-WAIVER**

The failure of either party to enforce at any time any of the provisions of this Contract or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Contract or the right of TMT to subsequently enforce every provision.

**NEW MATERIAL**

(a) Definitions.

- (1) "Material", as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.
  - (2) "New", as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former surplus property.
  - (3) "Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.
- (b) Unless this contract specifies otherwise, the Contractor represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety.
- (c) If the Contractor believes that furnishing other than new material will be in TMT's interest, the Contractor shall so notify TMT negotiator in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due TMT if TMT negotiator authorizes the use of other than new material.

**NOTICE OF RADIOACTIVE MATERIALS**

(This Article is applicable only if this Contract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) with TMT negotiator and adding TMT with the Government in all respects.

**ORDER OF PRECEDENCE**

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions") and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
  - (1) The General Terms and Conditions.
  - (2) The Schedule.
  - (3) Changes.
- (c) To the extent of any inconsistency between

- (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,
- (c)(1) has order of precedence over (c)(2).

### **OWNERSHIP**

All artwork, type, plates, negatives, positives, drawings, dies, templates, software, and other such items furnished to the seller by TMT, or created for TMT, for use in the performance of this Contract shall become or remain the property of TMT and must be delivered to TMT immediately upon request.

TMT will own all rights to the work product delivered to it pursuant to this purchase order and will have the right to use, reproduce and adapt it for any purpose. If requested, Contractor will sign or assist in preparation of documents necessary to perfect title to the work product at TMT's expense. TMT's ownership and title to its information shall not be affected by the transfer of the information to the seller. Ownership and right to use or modify the work product shall survive the term of this purchase order.

### **PAYMENTS AND DISCOUNTS**

- (a) Invoices shall be submitted in triplicate to the attention of TMT Accounts Payable Department, unless otherwise specified, and shall contain the following information as applicable: (i) Seller's name, (ii) Contract/purchase order/p-card/electric order number (as applicable), (iii) name and phone number of buyer's representative who placed the order, (iv) item number, (v) description of supplies or services, (vi) size, (vii) quantity, (viii) unit price, (ix) extended totals and (x) any other information which may be specified on the face of this order including the remit to address and telephone number. Any applicable state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.
- (b) TMT shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.
- (c) TMT may elect to require the Contractor to accept electronic payments.
- (d) TMT shall make its best effort to make payments within the net period, if any, specified in the Contract, measured from the date of receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. In no event will TMT be liable for or pay a surcharge, interest, or any kind of penalty as a result of TMT's payment not being made within the net period, if any, specified in the Contract or the date of payment by electronic funds transfer.
- (e) Payment for goods or services in accordance with this paragraph will not waive or otherwise affect the right of TMT to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (f) Unless otherwise specified in this Contract, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Contract.
- (g) Except to the extent otherwise stated in the Contract Schedule, TMT's obligation to pay the Contract price for goods delivered or services performed is automatically waived for an amount of \$1,000 or less if no invoice is received by TMT for that amount due within 60 days of receipt of the related goods or services.

### **RELEASE OF INFORMATION**

The Contractor shall not use TMT's name in any advertising or publicity releases, or publicize the fact that TMT has placed the Order with the Contractor, without the prior written consent of TMT.

### **RESPONSIBILITY FOR SUPPLIES**

- (a) Title to supplies furnished under this Contract shall pass to TMT upon formal acceptance by TMT, regardless of when or where TMT takes physical possession, unless the Contract specifically provides for earlier passage of title.
- (b) Unless the Contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to TMT upon:
  - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Acceptance by TMT or delivery of the supplies to TMT at the destination specified in the Contract, whichever is later, if transportation is f.o.b. destination.

## **SHIPPING**

- (a) Each container and accompanying packing lists must show this Order number. The Order price includes all charges for packaging, packing and shipping, and no additional charge for such will be paid unless authorized by Buyer. All goods shall be packaged to assure safe delivery, to meet the carrier's requirements, and to obtain the most favorable transportation and insurance rates. Routing, shipping, and delivery instructions shown on the face of this Order must be followed, and Seller shall be liable for any excess charges or damage resulting from deviation therefrom. Seller shall not declare excess value on shipments unless authorized by Buyer or done for his own account.
- (b) Risk of loss, injury, or destruction; and title shall not transfer until goods ordered are delivered and accepted by Buyer. Any such loss, injury or destruction shall not release Seller from any obligation under this Contract.
- (c) Seller agrees to trace lost or delayed shipments at the request of Buyer.
- (d) The goods specified are to be shipped by surface carrier, and delivered F.O.B. destination, freight prepaid, unless otherwise specified by Buyer.

## **TAXES**

Except as may be otherwise provided in this Order, the Order price includes all applicable Federal, State, and local taxes and duties. With respect to transactions for which the Buyer may be exempt from any tax or duty, the Buyer will provide, upon request, evidence to support its claim to such exemption.

## **TERMINATION FOR CAUSE**

TMT may terminate this Contract, or any part of it, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any Contract terms and conditions, or fails to provide TMT, upon request, with adequate assurances of future performance. In the event of termination for cause, TMT shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to TMT for any and all rights and remedies provided by law. If it is determined that TMT improperly terminated this Contract for default, such termination shall be deemed a termination for convenience.

## **TERMINATION FOR CONVENIENCE – FIXED PRICE**

TMT reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, the Contractor shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of TMT, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or Contract cost principles for this purpose. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## **VALIDITY**

In the event that any provision of this Contract shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Contract.

## **WAIVER**

No claim or right arising out of a breach of this Contract can be discharged, in whole or in part, by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

## **WARRANTY FOR COMMERCIAL ITEMS**

The Contractor shall provide TMT with a copy of any standard warranty which is normally offered on a commercial product deliverable under this Contract. This warranty shall be deemed to be incorporated by reference and TMT shall be entitled to all rights under such warranty.

**[Remainder of Page Left Intentionally Blank]**