

SUBSECTION I. NMHU GENERAL TERMS AND CONDITIONS

1. **INSPECTION:** NMHU may inspect, at any reasonable time, any part of Contractor's (may also be referred to as "Vendor") plant or place of business which is related to performance of the Purchase Order. Final inspection will be made at the destination. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Any testing or inspection procedures required by the specification add to NMHU's rights under this paragraph.

2. **WARRANTIES:** Contractor warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable Uniform Commercial Code warranties, express or implied are incorporated herein.

3. **ACCEPTANCE AND REJECTION:** If prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, or if NMHU is entitled to revoke acceptance of them, NMHU may reject or revoke acceptance, require Contractor to correct without charge within a reasonable time, or require delivery at an equitable reduction in price at NMHU's option. Contractor shall reimburse NMHU for all incidental and consequential costs related to unaccepted materials, supplies or services. Notwithstanding final acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach.

4. **ASSIGNMENT:** This order is assignable by NMHU. Except as to any payment due hereunder, this order is not assignable by Contractor without written approval of NMHU.

5. **CHANGES:** NMHU may make changes within the general scope of this order by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an appropriate equitable adjustment shall be made. Changes by Contractor shall not be recognized without prior written approval of NMHU. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the release of payment by NMHU. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the order as changed hereunder.

6. **TERMINATION AND DELAYS:** NMHU may be written notice, stating the extent and effective date terminate this order for convenience in whole or in part, at any time. NMHU shall pay Contractor as full compensation for performance until such termination: (1) the unit or pro-rated order price for the delivered and accepted portion, and (2) a reasonable amount, not otherwise recoverable from other sources by Contractor, as approved by NMHU, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Contractor's actual cost, and may not include anticipated profits. NMHU may require Contractor to provide an itemized list and/or receipts of those actual costs.

NMHU may by written notice terminate this order in whole or in part for Contractor's default if Contractor refuses or fails to comply with the provision of this order, or so fails to make progress as to endanger performance and does not cure such failures within a reasonable period of time. In such event, NMHU may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by NMHU thereby, including incidental and consequential damages.

If after notice of termination, NMHU determines Contractor was not in default, or if Contractor's default is due to failure of NMHU, termination shall be deemed for the convenience of NMHU. The rights and remedies of NMHU provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this article, the word "Contractor" includes Contractor and his subcontractors/subsuppliers at any tier.

If this order is subcontracted under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and from a part of, the terms and conditions of this order. In the event of any conflict between the terms and conditions of Subsection II and any other provisions of this order, the terms and conditions of Subsection II shall prevail. The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated herein by reference.

SUBSECTION II. GOVERNMENT SUBCONTRACT PROVISIONS

A. The following provisions of the Federal Acquisition Regulations (FAR) apply regardless of the amount of this order:

- * Anti-kickback Procedures 52.203-7
- Buy American Act and Balance of Payments Program 52.225-7001
- * Contract Work Hours and Safety Standards Act-Overtime Comp. 52.222-4
- * Equal Employment Opportunity 52.222-26
- Integrity of Unit Prices 52.115-26(a)(b)
- Notice to the Government of Labor Disputes 52.222-1
- Preference for U.S. Flag Air Carriers (for international air travel) 52.247-63
- Restriction on Subcontractor Sales to the Government 52.203-6
- Service (Contract Act of 1965 (reserved)) 52.222-41
- * Termination for Convenience of Government (Education and other Nonprofit institutions) 52.249-5(a)(f)

B. The following provision of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$3,500: 52.222-36

C. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$10,000: 52.222-35

- Affirmative Action for Special Disabled and Vietnam Era Veterans 52.215-2
- Audit- Negotiations 52.215-2
- Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era 52.219-8
- * Examination of Records by Comptroller General Utilization of Small Business Concerns 52.222-20
- Walsh Healey Public Contracts Act

- D. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$25,000: 52.227-1
- Authorization and Consent 52.227-1
- Notice and Assistance re: Patent and Copyright Infringement 52.247-64
- Preference for Privately Owned U.S. Flag Commercial Vessels 52.203-3
- Utilization of Labor Surplus Area Concerns 52.219-13
- Utilization of Women-Owned Small Businesses

NMHU reserves all administrative, contractual and legal remedies against the contractor or Contractor who breaches any of the contract terms.

7. **AFFIRMATIVE ACTION:** Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Contractor agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women, to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment, communicate this policy in both English and Spanish to all persons concerned within the company, with outside recruitment services and the minority community at large, to provide NMHU on request a breakdown of his labor force by ethnic group, sex, and job category; and to discuss with NMHU his policies and practices relating to his affirmative action program.

8. **INDEMNIFICATION AND INSURANCE:** Contractor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Contractor, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or without misconduct of NMHU. Contractor shall indemnify and hold harmless NMHU, its officers, agents and employees from any and all liability for such losses, expenses, damages, demands and claims and shall defend any suit or action brought against any or all of them based on any actual, or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

Contractor agrees that it and its subcontractors will maintain public liability and property insurance in reasonable amounts covering the above obligation and will maintain workers' compensation covering all employees performing this order on premises occupied by or under the control of NMHU. Contractor is to include NMHU, its officers, Regents, agents and employees as a "Policy Holder" of such liability insurance.

9. **PATENT AND COPYRIGHT INDEMNITY:** Contractor shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent or other intellectual property rights, Contractor shall indemnify and hold NMHU harmless from any cost, expense, damage, or loss resulting therefrom.

10. **DISCOUNTS:** Any discount time will not begin until the materials, supplies or services have been received and accepted and correct invoice received by NMHU's Purchasing Department. In the event testing is required, the discount time shall begin upon the completion of the tests.

11. **PENALTIES:** The Procurement Code, Section §13.1-28 et seq., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

12. **TITLE AND DELIVERY:** Title to the materials and supplies passed hereunder shall pass to NMHU at the F.O.B. point specified subject to the right of NMHU to reject upon inspection. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval therefor from NMHU. Time is of the essence and the order is subject to termination for failure to deliver on time.

13. **OTHER APPLICABLE LAWS:** Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein. These terms & conditions are in addition to the State of New Mexico Procurement Code, §13-1-28 N.M.S.A. 1978. Any conflicts in these and other NMHU Terms & Conditions are superseded by the Procurement Code and Federal laws. In such a situation, all contracts, purchase orders, agreements and other related documents may be null and void.

E. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$100,000: 52.223-12

- Clean Air & Water 52.215-24 or
- Price Reduction of Defective Cost or Pricing Data 52.223-12
- Subcontractor Cost or Pricing Data 52.215-25
- Note 52.115-24 applies if cost or pricing data is initially required if not 52.215-25 applies to transactions over \$100,000.

F. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$500,000: 52.220-4

- Labor Surplus Area Subcontractors Program 52.219-9
- Small Business and Small Disadvantaged Business Subcontracting Plan
- G. The following provisions of the Federal Acquisition Regulations (FAR) apply when noted: 52.227-10
- Filing of Patent Applications-Classified Subject Matter 52.223-3
- Hazards Material Identification and Material Safety Data 52.204-705
- Overseas Distribution of Subcontract 52.227-11
- When the subcontract or purchase order involves experimental research and development work 52.227-11.12
- When the subcontract or purchase order involves applies to small business and non-profit organizations. 52.227-7013
- When subcontract includes technical data or software acquisition requirements (DOD only) 52.227-7013
- When subcontract or purchase order requires use of jewel bearings 52.208-1
- When subcontract includes technical data or software acquisition (DOD only) 52.227-7018
- When subcontract involves classified information 52.204-2
- When subcontract amount exceeds \$25,000 (DOD only) 52.203-7001
- When subcontract includes technical data or software acquisition (DOD only) 52.227-7037

On contracts funded by federal grants, only the Special Terms and Conditions clauses identified by the asterisk () are incorporated into this contract.