



## Section 8 : GENERAL TERMS AND CONDITIONS

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### 860. FIXED PRICE COMMERCIAL GENERAL TERMS AND CONDITIONS(10/1/96).

#### 1. FORMATION OF THE CONTRACT

This order is Buyer's offer to Seller, and acceptance by Seller is limited to the terms of this offer. Buyer objects to any additional terms stated in Seller's acceptance. Acceptance may be by prompt written acknowledgment or by beginning performance. Seller's acceptance of this order creates a binding contract between Seller and Buyer ("this contract"), which shall be governed by the terms and conditions of this order.

#### 2. MODIFICATIONS

None of the terms and conditions of this contract may be contradicted, modified, supplemented, explained, waived, or rescinded except as provided in this contract or in a written agreement signed by both parties. Only Buyer's authorized purchasing representative may sign on behalf of Buyer.

#### 3. INSPECTIONS

(A) Seller will provide and maintain an inspection system acceptable to Buyer covering goods and services under this contract and will tender only goods that have been inspected and found to conform to this contract's requirements. Seller will keep records evidencing inspections and their results and will make these records available to Buyer during contract performance and for three years after final payment.

(B) All goods to be delivered and services to be performed hereunder will be subject to inspection and test, to the extent practicable at all times and places, including the period and place of manufacture or performance, and in any event before acceptance, by Buyer. Buyer will perform inspections and tests in a manner that will not unduly delay the work.

(C) If Buyer performs an inspection or test on the premises of Seller or its subcontractor, Seller will furnish, and require its subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

#### 4. QUALITY CONTROL

Seller will provide and maintain a quality control system acceptable to Buyer for the goods and services purchased under this contract, and Seller will permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability.

#### 5. DELIVERY

Seller will strictly adhere to the delivery and completion schedules specified in this contract. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller will immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it, and will provide Buyer with a written recovery schedule.

Seller will continue to notify Buyer of any material change in the situation. If Seller fails to deliver goods within the delivery schedule, Buyer may require Seller to ship goods, at Seller's expense, by air freight or expedited routing.

## 6. ACCEPTANCE, REJECTION, AND CORRECTION OF DEFICIENCIES

(A) Buyer will accept or give notice of rejection of goods delivered and services performed within 90 days of

receipt of goods or completion of services. Acceptance is not conclusive as to latent defects, fraud, or gross mistakes amounting to fraud.

(B) Goods. If Seller tenders nonconforming goods, Buyer may, at its option, require Seller to replace or correct the goods, at no increase in contract price. Seller will not tender for acceptance corrected or rejected goods without disclosing the former rejection or requirement for correction, and, when required, will disclose the corrective action taken. Unless Seller corrects or replaces nonconforming goods within the delivery schedule, Buyer may require their delivery and make an equitable price reduction.

(C) Services. If services do not conform with contract requirements, Buyer may require Seller to perform the services again in conformity with contract requirements, at no increase in contract price. When the defects in services cannot be corrected by reperformance, Buyer may (i) require Seller to take necessary action to ensure that future performance conforms to contract requirements; and (ii) reduce the contract price to reflect the reduced value of the services performed.

(D) This Article applies to corrected or replacement goods or services in the same manner as to goods or services originally delivered or performed.

## 7. WARRANTY

(A) Goods. Seller warrants that all goods furnished under this contract will be free from defects, will conform with all requirements of this contract, and, to the extent not manufactured pursuant to designs furnished by Buyer, will be free from defects in design. Any goods corrected or replaced will be covered by this warranty.

(B) Services. Seller warrants that all services performed under this contract will be free from defects and will conform to the requirements of the contract. Any services corrected or reperfomed will be covered by this warranty.

(C) If Seller breaches this warranty, Buyer may, at no increase in contract price (i) require Seller to promptly repair or replace, at Seller's election, defective or nonconforming goods; (ii) require Seller to promptly furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the contract price to account for the cost of removal and installation; (iii) require Seller to promptly redesign defective or nonconforming goods not manufactured pursuant to designs furnished by Buyer and require Seller to promptly repair or replace goods manufactured in accordance with such defective design; (iv) require Seller to promptly correct or reperform, at Seller's election, defective or nonconforming services; or (v) equitably reduce the contract price.

(D) Notwithstanding any disagreement regarding the existence of a breach of this warranty, Seller will comply with Buyer's direction to (i) repair or replace, at the Seller's election, the goods or (ii) furnish materials or parts and installation instructions required to successfully repair the goods. If it is later determined that Seller did not breach this warranty, the contract price will be equitably adjusted.

## 8. CHANGES

(A) Buyer may, at any time, by written order signed by its authorized purchasing representative, and without notice to

sureties, if any, make changes within the general scope of this contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; (iv) description of services to be performed; (v) time of performance of services (i.e., hours of the day, days of the week, etc.); (vi) place of performance of services; or (vii) delivery schedule.

(B) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contract price, the delivery schedule, or both, will be equitably adjusted, and the parties will modify this contract in writing.

(C) Unless otherwise agreed in writing, Seller must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written change order. However, Buyer may consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer will have the right to prescribe the manner of the disposition of the property. Buyer may examine any of Seller's pertinent books and records to verify the amount of Seller's claim.

(D) Notwithstanding any dispute under this Article, Seller will proceed with performance of this contract as changed.

## 9. INVOICE AND PAYMENT

(A) For each shipment of goods or completed item of services, Seller will submit an original invoice marked "Original" and one copy marked "Copy" to Buyer's appropriate Accounts Payable Department. Taxes, if any, must be separately itemized. Order number and line item number must appear on all invoices, shipping documents, quality certificates, and packing sheets.

(B) Determination of payment due date, whether under net or discount terms, will be based on the latest of (i) the date goods are received or services performed; (ii) the date provided in this contract for receipt of goods or completion of services, or (iii) the date an accurate invoice is received in the Accounts Payable Department specified elsewhere in this contract.

(C) Payment will be deemed to have been made when deposited in the mail.

## 10. TERMINATION FOR CONVENIENCE

(A) Buyer may terminate performance of work under this contract in whole or, from time to time, in part, by delivering to Seller a written Notice of Termination specifying the extent of termination and the effective date.

(B) Buyer will pay Seller (i) the contract price for goods and services completed and accepted but not previously paid for; (ii) reasonable costs incurred in performance of work terminated but not completed; (iii) reasonable profit on work terminated but not completed; and (iv) reasonable costs incurred as a result of the termination, adjusted for any savings allowed by the termination. However, if it appears that Seller would have suffered a loss on the entire contract had it been completed, Buyer will pay no profit and will reduce the settlement to reflect the indicated rate of loss. In no event will Buyer pay Seller more than the contract price.

(C) Seller will submit to Buyer a fully supported written termination settlement proposal within 90 days after receipt of a Notice of Termination, and Buyer and Seller will promptly negotiate a termination settlement. Failure to agree upon a settlement will be a dispute. Buyer may examine any of Seller's books and records relevant to the amount Seller should be compensated for the termination. If Seller fails to timely submit a termination settlement proposal, Buyer will determine the amount due under paragraph (B), if any, and Seller will be bound by Buyer's determination.

(D) If the termination is partial and Seller submits to Buyer a written proposal for equitable adjustment within 90 days after

receipt of the Notice of Termination, the parties will equitably adjust the price of the continued portion of the contract if failure to adjust the price would be unfair to the Seller.

## 11. CANCELLATION FOR DEFAULT

(A) Buyer may, by written notice of default to Seller, cancel this contract in whole or in part (i) if Seller fails to deliver goods or to perform services within the time specified by this contract or any written extension; (ii) if Seller fails to perform any other provision of this contract or fails to make progress, so as to endanger performance of this contract, and, in either of these two circumstances, does not cure the failure within ten days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of its creditors.

(B) Seller will continue work not canceled.

(C) If Buyer cancels this contract in whole or in part, in addition to remedies provided by law, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, (i) any completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively, "manufacturing materials") that Seller has specifically produced or acquired for the canceled portion of this contract. Upon direction from Buyer, Seller will also protect and preserve property in its possession in which Buyer has an interest.

(D) Buyer will pay the contract price for goods or services accepted. Payment for manufacturing materials accepted by Buyer and for the protection and preservation of property will be at a price determined in accordance with Article 10 hereof, except that Seller will not be entitled to profit. Buyer may withhold from any amount due under this contract any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(E) If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties will be as if the contract had been terminated in accordance with Article 10 hereof.

## 12. BUYER'S PROPERTY

Seller will clearly mark, maintain an inventory of, and keep segregated or identifiable all Buyer property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction, or damage to such property while in Seller's possession, custody, or control, and will not use such property other than in performance of this contract without Buyer's written consent. Seller will notify Buyer if Buyer's property is lost, damaged, or destroyed. As directed by

Buyer, upon completion, termination, or cancellation of this contract, Seller will deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses.

## 13. NONDISCLOSURE

Neither party will, without the prior written consent of the other, reproduce, use, or disclose to any employee or third party any proprietary information or data furnished by the other party, except as required to perform this contract. Any information or data must be clearly marked as proprietary to qualify for nondisclosure. This restriction does not apply to information or data: (i) in the public domain through no breach of this contract by the recipient, (ii) otherwise known to the recipient at the time of receipt without restrictions as to use or disclosure, or (iii) acquired by the recipient from a source other than the disclosing party that has the right to disclose such information to the recipient.

#### 14. PATENT, TRADEMARK, COPYRIGHT, AND MASK WORK INDEMNITY

Seller agrees to indemnify and hold harmless Buyer against any expense, loss, or liability for any actual or alleged infringement of any patent, trademark, copyright, or mask work arising from or related to the use, sale, manufacture, disposal, display, or reproduction of goods purchased or services performed under this contract. Upon timely receipt of notice of any claim or suit alleging such infringement, Seller agrees to defend Buyer at Seller's expense. Seller is excused from its duties under this Article if such actual or alleged infringement would not have arisen but for Seller's compliance with Buyer's detailed design.

#### 15. INTELLECTUAL PROPERTY RIGHTS

Seller will promptly disclose to Buyer in writing any invention, works of authorship, improvement, development, discovery, or mask work conceived or reduced to practice by Seller, either solely or in collaboration with others, using funds paid by Buyer under this contract. Seller will assign all such inventions, works of authorship, improvements, developments, discoveries, or mask works to Buyer. Seller will execute all documents and do whatever is reasonably necessary to ensure that Buyer will obtain full title to such inventions, works of authorship, improvements, developments, discoveries, or mask works and to enable Buyer to secure copyright protection or to file and prosecute applications for patents at Buyer's expense.

#### 16. SUBCONTRACTING AND ASSIGNMENT

(A) Without Buyer's written consent, Seller will not delegate any duty of performance or subcontract for the design, development, or procurement of any substantial portion of goods or services under this contract. This limitation does not apply to Seller's purchases of standard commercial supplies or raw materials.

(B) Except as hereinafter provided, neither this contract nor any duty, right, or interest therein may be delegated, assigned, or otherwise transferred in any manner by Seller without the prior written consent of Buyer. Any attempted effort to the contrary will be void and Buyer may cancel this contract. Either party may, upon notice to the other, assign this contract to any person, firm, or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for monies due or to become due hereunder to any bank, trust company, or other financial institution, including any governmental lending agency. The assigning party will furnish the other party with two signed copies of any such assignment and such other documents that may be reasonably required by the non-assigning party.

(C) Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

#### 17. SUSPENSION OF WORK

(A) Buyer's authorized purchasing representative may, by written order, suspend all or part of the work to be performed under this contract. Within 90 days of the suspension of work order, or within any additional time as the parties may agree, Buyer will (i) cancel the suspension of work order; (ii) terminate this contract in accordance with Article 10 hereof; or (iii) cancel this contract in accordance with Article 11 hereof.

(B) Seller will resume work whenever a suspension expires or is canceled. An equitable adjustment will be made in the delivery schedule, the contract price, or both, if (i) this contract is not canceled or terminated for convenience, (ii) the suspension results in a change in Seller's cost of performance or ability to meet the contract delivery schedule, and (iii) Seller submits a claim for adjustment within 30 days after the suspension expires or is canceled.

#### 18. DISPUTES

(A) Pending final resolution of any dispute arising under, related to, or involving this contract, Seller agrees to proceed with performance of this contract, including the delivery of goods, in accordance with Buyer's instructions. Seller's failure to proceed in accordance with Buyer's instructions shall be considered a material breach of this contract.

(B) Both parties agree to enter into good faith negotiations to resolve any dispute that arises under, is related to, or involves this contract. If the dispute is not disposed of by agreement, Seller will submit to Buyer's authorized purchasing representative a written demand for Buyer's final decision regarding the disposition of any such dispute, unless Buyer, on its own initiative, has already rendered such a final decision. Any final decision will be expressly identified as such, will be in writing, and will be signed by Buyer's authorized purchasing representative. Buyer's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within 90 days following the date of the decision or one year following the accrual of the cause of action, whichever is later.

## 19. APPLICABLE LAW

This contract will be governed by and construed in accordance with the law of the state in which Buyer's Purchasing Department placing this contract is located, with no consideration to that state's conflict of laws rules, regardless of the places of execution or performance of this contract.

## 20. WAIVER AND SEVERABILITY

Any action or inaction by Buyer or the failure of Buyer, on any occasion, to enforce any right or provision of this contract will not be construed to be a waiver by Buyer of its rights hereunder and will not prevent Buyer from enforcing such provision or right on any future occasion. A determination that any portion of this contract is unenforceable or invalid will not affect the enforceability or validity of any of the remaining portions of this contract.

## 21. RIGHTS AND REMEDIES

The rights and remedies of the parties set forth in this contract are cumulative and in addition to any other rights or remedies that they may have at law or in equity. Buyer may offset any damages resulting from a breach of any contract between Buyer and Seller against the price due under any other such contract.

## 22. COMPLIANCE WITH STATUTES AND REGULATIONS

Seller will comply with all applicable statutes and government rules, regulations, and orders.

## 23. PRECEDENCE

(A) If the various parts of this contract are inconsistent, the following order of precedence will apply; (i) special terms and conditions; (ii) the terms and conditions in this clause; (iii) specifications; (iv) all other attachments incorporated in this contract by reference.

(B) Buyer's specifications will prevail over any subsidiary documents referenced therein. Seller will not use any specification in lieu of those contained in this contract without the written consent of Buyer's authorized purchasing representative.

## 24. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

Seller will not make, deny, or confirm any news release, advertisement, or public announcement concerning the subject matter of this contract or any phase of the program hereunder without Buyer's prior written approval.

## 25. PACKING

(A) All goods are to be packed and packaged for protection during shipment and storage in accordance with best commercial practice or ASTM-D-3951. If Government specification packaging is required, goods are to be packed and packaged in accordance with said specification(s). Highly polished, highly finished, or precision parts are to be properly preserved and packed in containers which will afford physical protection against damage and deterioration. Where appropriate, a shipment consisting of two or more shipping containers will be combined into a unitized load. A unitized load will be limited to 50 inches overall height, on a 42 inch X 48 inch pallet (double deck construction), with no more than a 4 inch overhang on any one side. All unitized loads consisting of multiple containers will be properly stacked and bound, i.e., an efficient stacking pattern, bound by stretch wrap. Any single container over 150 pounds or 60 inches or greater footprint must integrate a four-way entry skid to permit the use of standard material handling equipment. Items packaged with nonconforming packaging are subject to rejection and repackaging at Seller's expense.

(B) Each container will be marked with Buyer's contract number. Each container of a multiple container shipment will be identified to show the number of the container and the total number of containers in the shipment. The packing sheet will be enclosed in or attached to the number one container. All shipments regardless of originator must include packing sheets containing Buyer's contract number, quantity, part number/size, and description of the items shipped. Material for different contracts will be listed on separate packing sheets.

## 26. SHIPPING INSTRUCTIONS

Seller will ship the goods in accordance with the instructions set forth below and the specific routing terms incorporated in this contract.

### (A) Shipping Documentation

(i) All items shipped on the same day will be consolidated on one Bill of Lading or Airbill, unless otherwise authorized by Buyer.

(ii) Material will be described on shipping documents (Bill of Lading or Airbill) in accordance with the applicable classification and/or tariff.

(iii) The total number of shipping containers will be referenced on all shipping documents.

(iv) Buyer's contract number will be referenced on all shipping documents.

(v) Originals of all Government Bills of Lading will be surrendered to the origin carrier at the time of shipment.

(vi) The memorandum/consignee copy of Bill of Lading or Airbill will be mailed to Buyer's Traffic Management Department referenced elsewhere in this contract, or Buyer's authorized purchasing representative.

### (B) Freight Terms

(i) "Prepay and Add" is not authorized.

(ii) Seller must ship "Collect" to Buyer on all F.O.B. Origin shipments.

(iii) Third Party/Direct Shipments must adhere to the instructions set forth herein and, if Buyer is responsible for the freight

costs, must be shipped "Third Party Collect" to Buyer.

(C) Air Shipments

Air shipments weighing 500 pounds or more must be authorized by Buyer. Prior to making such shipments, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative for the applicable carrier account number.

(D) Specialized Shipments

Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative prior to shipping the following types of shipments:

(i) Classified Shipments

(ii) Electronics

(iii) Explosives

(iv) Over-Dimensional shipments

(v) Refrigeration shipments

(vi) Shipments exceeding 1000 pounds in gross weight

(vii) Shipments requiring special handling or equipment (i.e., air ride equipment, fragile items, heavy haul trailers, etc.)

(E) Insurance

Seller will not insure any shipment unless authorized by Buyer.

(F) Shipping Container Labels

(i) Seller will label each shipping container with the contract number.

(ii) Seller will label each container with the number that each container represents of the total number to be shipped (e.g., Box 1 of 2, Box 2 of 2).

(G) Weights

Weights listed herein and/or in the contract refer to the gross total combined weight of all shipping containers.

(H) Carrier Selection

Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer.

(I) Invoices



Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.

(J) Noncompliance

- (i) If unable to comply with the instructions in this contract, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative.
- (ii) Failure to comply with the shipping instructions in this contract will result in Seller being liable for loss or damage in transit. In addition, excess freight charges and a \$50 administrative processing fee will be debited to Seller.

(K) Inquiries or special instructions

Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's authorized purchasing representative with inquiries or requests for special instructions.

## 27. OFFSET AND CO-PRODUCTION

(This Article applies only if the end-item procured hereunder is controlled by Buyer's Specification and/or Drawing).

(A) Seller will use its best efforts to cooperate with Buyer in the fulfillment of any offset program obligation that Buyer may have accepted as a condition of the sale of a product of Buyer's to a foreign nation.

(B) Buyer reserves the right to all "offset" credits resulting from the co-production or other similar obligations entered into between Seller and foreign sources of any goods or services in support of the procurement hereunder. Seller may not procure or offer to procure any goods or services ordered hereunder from any foreign source without the prior written approval of Buyer. This reservation applies to not only the goods and services ordered hereunder but also to the procurement of additional quantities thereof by means of options or similar commitments obtained by Seller to fulfill anticipated requirements Buyer may have. Seller may not enter into such procurements from foreign sources to support Buyer's future requirements without Buyer's prior written approval.

(C) While Buyer's approval under the foregoing paragraph may not be unreasonably withheld, Seller may be required to complete and file all necessary documentation in order to effect the passing through of offset credits to Buyer as a condition precedent to such approval.

## 28. NEW ITEMS OF MANUFACTURE

In the event (i) there are any new features of design incorporated in any material, software, article, or machine made under this contract as a result of Seller's compliance with the drawings or specification of Buyer, (ii) a portion of such development cost is being charged by Seller directly or indirectly to Buyer, and (iii) the material, software, article, or machine to be made hereunder is not merely a slight modification of a material, software, article, or machine with respect to which Seller already possesses patent rights or copyrights, then Seller grants to Buyer the right to reproduction of such material, software, article, or machine together with a royalty-free, non-exclusive, irrevocable license under any U. S. patent or copyright covering such new features.

## 29. ADVANCE MANUFACTURE, ADVANCE SHIPMENTS, AND OVER SHIPMENTS

The goods covered by this contract will be delivered in accordance with the delivery schedule. Seller will not, without Buyer's prior written consent, manufacture in advance of the reasonable flow time required to accomplish delivery in

accordance with such schedule, nor will Seller deliver any such supplies in advance of such schedule without Buyer's written consent. Buyer reserves the right to return, shipping charges collect, or to store at Seller's expense all such supplies received by Buyer substantially in advance of such schedule. No over shipments will be accepted except those resulting in good faith from conditions of loading, shipping, packing, or allowances in manufacturing processes, and in no case exceeding (i) five percent of the quantity called for or (ii) the Forging Industry Association quantity tolerated.

### 30. EXPORT OF TECHNICAL DATA

(A) Seller represents and warrants that no technical data furnished to it by Buyer or developed by Seller directly from such data during performance of the work under this contract will be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the United States, without first complying with the licensing, approval, and all other requirements of the U.S. export control laws, regulations, and directives, including but not limited to the Arms Export Control Act (22 USC 2778), International Traffic in Arms Regulations (22 CFR, Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799) and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure.

(B) Seller will obtain the written consent of Buyer prior to submitting any request for authority to export any such technical data.

(C) Seller will indemnify and hold Buyer harmless from all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from failure of Seller to comply with this Article.

### 31. EXCUSABLE DELAYS

(A) Except for defaults of subcontractors at any tier, Seller will not be in default because of any failure to perform this contract under its terms if the failure arise from cause beyond the control and without the fault or negligence of Seller. Examples of these causes are (i) acts of God or the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. "Default" includes failure to make progress in the work so as to endanger performance.

(B) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and the cause of the failure was beyond the control of both Seller and subcontractor, and without fault or negligence of either, Seller will not be deemed to be in default, unless---

(1) The subcontracted goods or services were obtainable from other sources;

(2) Buyer directed Seller in writing to purchase these goods or services from the other source; and

(3) Seller failed to comply reasonably with this direction.

(C) Upon request of Seller, Buyer will ascertain the facts and extent of the failure. If Buyer determines that any failure to perform results from one or more of the causes above, the delivery schedule will be revised, subject to the rights of Buyer under the termination and cancellation clauses of this contract.