



Lyon
SHIPYARD

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Norfolk, Virginia 23501
(757) 622-4661

Lyon Shipyard Terms and Conditions

Section A

Definitions

A-1. The following definitions apply unless otherwise specifically stated:

- “Lyon” means Lyon Shipyard Inc.
- “Contract” means the Purchaser Order together with these Terms and Conditions.
- “Seller” or “Supplier” means the legal entity which contracts with Lyon pursuant to a Purchase Order.
- “Work” means the Seller’s services and materials to be provided to Lyon as set forth in a Purchase Order and subject to the requirements of these Terms and Conditions.
- “Purchase Order” means a written order for Work issued by Lyon and accepted by Seller.

Section B

Applicable Clauses

B-1. General Information. Seller will furnish all necessary management, material, labor, and services required to accomplish all Work.

Access to such shipyard temporary services as may be available from time to time, such as compressed air, electricity, and potable water, are provided at pier side riser connections. Seller is responsible to Lyon for cost of all labor and materials to connect to these connections. Shipyard temporary services are not guaranteed to be available and if Seller requires access to any such services, Seller must specifically contract for such services in a Purchase Order.

Seller shall submit a list of authorized personnel to Lyon’s Human Resources and Security Department 48 hours prior to access at any of Lyon’s facilities or offsite locations. The access list shall contain a list of Seller’s authorized personnel detailing the name, date of birth, and place of birth. Such list must be typewritten on Seller’s company letterhead and signed by an authorized agent of Seller. Lyon reserves the right to deny access to any person not identified as required hereunder.

The Seller agrees that, during the term of the Contract and for a period of one (1) year thereafter, neither Lyon nor Seller will knowingly solicit for employment any person employed by the other who is or was directly involved in the activities contemplated by this Contract, except with the express prior written permission of the other party; provided; however, that (a) the term “solicit” does not include general employment advertising, and (b) the foregoing will not prevent either party from employing any person who contacts that party on his or her own initiative.



B-2. Safety. Seller and its employees, while performing Work, shall adhere to all applicable, federal, state, and local laws and regulations, including, without limitation, all workplace laws, and all safety laws and regulations and shall also follow Lyon's safety rules and procedures available in the Safety office and Lyon's Website. The Seller will be responsible for providing all required safety equipment to comply with these safety laws, rules, and regulations. Equipment that Seller brings onsite shall be calibrated and maintained to the respective manufacture's specifications.

Seller shall at all times maintain an appropriate fully documented and implemented: OSHA Safety and Health Program, a Safety and Hazard Communication Training Program (as required by 29 CFR 1910.1200 and any subsequent or replacement law), Material Safety Data Sheets (MSDS) on site for any product being used by Seller, and a fully documented and implemented Confined and Enclosed Space Entry Program (as required by 29 CFR 1915 and any subsequent or replacement law). Seller agrees to provide upon request by Lyon an affidavit of compliance with these requirements. Seller agrees that Lyon can audit Seller's safety program at any time during normal business hours, and Seller shall grant Lyon a reasonable amount of time to complete any such audit. In the event of a safety violation the Seller agrees to mitigate the issue immediately. Seller agrees to respond to violations Internal Action Report (ICAR) within 1 working day upon request.

Seller's personnel working in areas designated by Lyon safety personnel as requiring respiratory protection equipment must be equipped by the Seller to be in compliance with OSHA-29 CFR Part 1915.134 respiratory protection and any subsequent or replacement law.

Seller shall not and shall not permit any of its employees, subcontractors or agents to smoke and or vape onboard any vessel. Smoking and or vaping is only allowed in available, designated smoking and vaping areas.

B-3. Environmental Compliance. Seller agrees that vessels often contain hazardous substances that may be encountered during the performance of Work. Such hazardous substances may include, but are not limited to: asbestos (used in heat and electrical insulation, brake linings, deck coverings, boiler refractories, joiner work and other areas), mercury, certain hydraulic oils, petroleum based products and substances, liquid cargo products (such as cashew shell oils), lead, and lead-based paints or antifoulants. The safe, proper and lawful handling of such substances will be at Seller's expense and is the Seller's responsibility, unless expressly provided otherwise in the Purchase Order. Seller shall determine for itself whether the Work requires the handling of hazardous substances and price the Work accordingly. No additional compensation for the handling of hazardous substances by Seller will be allowed unless Lyon recovers such additional compensation under its prime contract.

Seller shall comply and require all employees, subcontractors and suppliers to comply with all federal, state and local laws, regulations, ordinances, orders, notices, actions, or policies relating to, including, but not limited to, those concerning oil transfer and training in accordance with USCG 33 CFR 154 the acquisition, possession, handling, transportation,



treatment, abatement, removal, disposal or storage of hazardous wastes, substances or materials, or any substance the presence of which requires investigation or remediation, and Seller shall indemnify, defend and hold harmless Lyon, to the fullest extent permitted by law, from and against any and all claims, demands, losses, damages, costs, expenses or other liabilities of any kind or nature, including all costs of investigation, response, removal, disposal and remediation incurred by Lyon, arising from or relating to Seller's non-compliance with same. For purposes of illustration, and not by way of limitation, Seller must comply with the following, all as amended, and including any regulations or standards issued in connection therewith:

- (1) Occupational Safety and Health Act of 1970 (OSHA)
- (2) Clean Water Act and Virginia State Water Pollution Control Law
- (3) Rivers and Harbors Act of 1899 (Refuse Act)
- (4) Oil Pollution Act of 1990
- (5) Hampton Roads Sanitation District Industrial Wastewater Discharge Regulations
- (6) Clean Air Act and Virginia Air Pollution Control Law
- (7) Memorandum of Understanding with Virginia Air Pollution Control Board
- (8) Resource Conservation and Recovery Act (RCRA)
- (9) Community Right-to-Know Act (SARA Title III)
- (10) Comprehensive Environmental Response Compensation and Liability Act (CERCLA)
- (11) United States Coast Guard Oil Transfer Regulations 33 CFR 154

Unless expressly provided otherwise in a Purchase Order, the Seller is responsible for the loading, transportation and disposal of potentially hazardous material at properly licensed locations. No hazardous waste can be removed from Lyon property by Seller unless specifically approved in writing by Lyon in advance. Seller agrees to notify Lyon's Environmental Department once hazardous material has accumulated. Seller agrees to manage satellite accumulation area in accordance with RCRA guidelines. Seller agrees to receive approval to construct a satellite area on Lyons property prior to generating hazardous waste.

Seller agrees that the use of paints and volatile organic compound emitting materials shall be logged and submitted to the Lyon's Environmental Department by the 10th of each month on approved Seller's form. Seller agrees that approval of containment for the purposes of blasting, cleaning, washing and spray painting or any other use of VOC emitting materials shall be approved by Lyon's Quality Assurance Department and or Health, Safety, and Environmental Department before Seller begins such use.

By performing Work, Seller agrees to be bound by the terms and conditions set forth in this Contract. If Seller handles materials deemed potentially hazardous by either state or federal agencies, Seller shall adhere to the conditions stated in these terms and conditions.

B-4. **Quality Assurance.** Lyon and /or Lyon's customer may inspect Seller's work in progress at all times and places. Seller, at its own expense, shall promptly rectify any defects discovered during inspection or test. If inspection is on Seller's or Seller's suppliers'



premises, the Seller shall provide and require its suppliers to provide without additional charge, reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Neither Lyon's in-process inspection nor Lyon's approval of any of Seller's drawings or procedures of other submittals shall; (i) constitute acceptance of any work or (ii) relieve Seller of complying fully with all of the requirements of the Purchase Order.

All goods, materials and services supplied under this Purchase Order shall have a mandatory receipt inspection at Lyon's Receiving Department as outlined in Lyon's Level 2 Purchasing Receipt Inspections, LSY P-0840 and any replacement procedures or rules.

All scrap and unused material shall be returned to Lyon at completion of Work. Seller shall affix tags to all scrap identifying vessel's name, appropriate Work item number, and point of contact.

All measuring and test equipment utilized in the performance of a quality test by an Authorized Seller and or Supplier shall have a current calibration sticker in compliance with ANSI/NCSL Z540-3 or the most recent revision of Z540.

Seller must submit a test and inspection plan and a list of personnel qualified to perform the inspection requirements to Lyon's Quality Assurance ("QA") Department for approval prior to the start of any Work. On all government contracts, the checkpoint requirements as set forth in NAVSEA Standard Items, shall be strictly adhered to.

Seller shall notify Lyon's QA Department no less than eight hours prior to conducting inspections, examinations, tests, and as required per the test and inspection plans and provide the QA tickets as Objective Quality Evidence (OQE).

Seller shall furnish all testing reports/ coating reports, environmental data, and operational test data to Lyon's QA Department no later than (3) days after the accomplishment of specified activity.

Seller shall provide a written progress status report every week during the Contract period that must be signed by the appropriate superintendent.

When the Seller is supplying any welding, brazing, and Non Destructive Testing services the Seller shall;

- Submit a copy of the Acceptance letter by ABS and or NAVSEA to Lyons QA Department for all welding, (including stud welding), brazing, and Non Destructive Testing ("NDT") procedures no later than 5 days prior to the start of any production welding, brazing or NDT. The acceptance letter shall contain the exact procedure to be used.
- All NDT Inspections will be performed by individuals whose qualifications have been reviewed and approved by the Lyon's Quality Assurance Department prior to inspection and shall be available for review.



- All welding will be performed by Certified Welders whose qualifications have been reviewed, and approved by Lyon's QA Department prior to performing and production welding, and shall be available for review five days prior to the start of work and update as required throughout the duration of production work.
- Provide a copy of the approved cover page of the procedure for workmanship required by MIL-S-1689A paragraph 4.8.1 used to ensure welding / brazing product conformance.
- Provide complete training Objective Quality Evidence (OQE) for all personnel qualified to accomplish workmanship in section IAW MIL-S-1689A, Paragraphs 5.2.5 (a), (b), (c) and (d).
- Provide a copy of the approved cover page of the Welder Filler Control procedure required by MIL-S-1689A paragraph 5.2.7 and maintain a copy at the worksite throughout the duration of work.
- Maintain Copies of Certificate of Conformance (COC) for all filler / brazing material at the worksite. Copies shall be available for review upon request throughout the duration of work.
- Provide the inspection frequency for welding surveillance inspections meeting the requirements of MIL-S-1689A paragraphs 5.2.5 (a) through (o)
- Provide copies of welding surveillance inspections at the worksite throughout
- Provide a copy of welder/brazer qualification records and transfer records for personnel five days prior to the start of work and update as required throughout the duration.

B-5. Receipt Inspections. All government furnished/owned material (GFM) delivered to Lyon will have the delivery document signed by an employee of the Receiving Department. The GFM will be opened and inspected upon receipt, and stored in Lyon's GFM warehouse. All delivery and receipt of GFM is to be accomplished in accordance with LSY P-0853, Control of Control of Government Furnished Material .

Seller shall pack, mark, ship all goods and supplies in compliance with transportation regulations and good commercial practice and shall secure the most cost effective service and rates consistent therewith. No separate or additional charge is payable by Lyon for crating, storage, dunnage or drayage, boxing, or bundling unless specifically stated in the Purchase Order.

B-6. Changes. Either Lyon or Seller may at any time, by written order, (hereinafter called a "Change Order") may propose such changes (including additions and deletions) in the specifications for additional Work that are within the general scope of the Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for performance of the Contract, an equitable adjustment shall be made in the price or time of performance or both and the Contract shall be amended in writing accordingly.

Upon receipt of the Change Order from Lyon, the Subcontractor shall promptly prepare and submit electronically to Lyon an estimate of any increase or decrease in the cost of, or the time required for, performance of the Contract. To the extent the customer must evaluate and approve the Change Order, the estimate shall be supported by a breakdown in such form and reasonable detail as the customer may specify, including purchase orders,



invoices, time records, etc., for the Subcontractor. Lyon will review and respond to the Change Order request within five (5) days, or the Change Order will be deemed disapproved.

Lyon may, by a written order (Change Order), make such changes in the specifications for the Work and schedule within the general scope of the Purchase Order. If any such change causes an increase or decrease in the cost of, or time required for performance, a request for adjustment in price and or schedule shall be presented to Lyon within 48 hours. If Seller fails to submit a request within such time period, Seller waives any claim Seller may have with respect to the Work covered by the Change Order and shall remain responsible for completing any Work required in the Change Order without additional compensation or time.

B-7. Termination for Convenience. The Purchase Order may be terminated in part or in its entirety for Lyon's convenience, without liability to Lyon for any uncompleted Work by the Seller.

B-8. Default. Seller shall commence Work on the date set forth in the Purchase Order and shall complete all Work within the time specified therein. Failure to perform the Work within the performance period shall be considered a material breach of the Contract. Seller expressly acknowledges and agrees that the time requirements imposed on the Seller under the Contract are of the essence and will be strictly enforced unless extended by Lyon in writing.

If the Seller fails to perform the Work within the time specified in the Purchase Order including any written extension thereof, or otherwise fails to perform the Work in accordance with the terms of the Contract, or so fails to make progress as to endanger the performance of the Work, or refuses or fails to properly perform or abide by any terms, covenants, conditions, or provisions contained in the Contract, or fails or refuses to obey any laws, ordinances, regulations, rule or other codes of conduct applicable to Seller, the Work or any of its subcontractors, employees or agents, or fails to provide adequate assurances of performance, then Lyon may, without releasing or waiving any of its rights and remedies against Seller or Seller's sureties, and without prejudice to any other rights Lyon may be entitled to under the Contract or at law or in equity, terminate the Purchase Order in whole or in part by means of a written notice of default. If Lyon terminates the Purchase Order in whole or in part as provided by this paragraph, Lyon may arrange for the completion of the Work so terminated, and the Seller shall be responsible to cover costs incurred therein, in addition to Lyon's other rights and remedies at law or in equity. In the event that Lyon deems any of the foregoing remedies necessary, Seller agrees that it shall not be entitled to receive any further payment until after the Contract has been completed. Moreover, all monies expended and all costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorney's fees) incurred by Lyon to achieve such completion, shall be deducted from the amounts due Seller under the Contract, and if such expenditures, together with said costs, losses, damages and extra expenses, exceed the unpaid balance of



the sum due Seller under the Contract, Seller agrees to pay promptly to Lyon, on demand, the full amount of such excess, including costs of collection, attorney's fees and interest thereon at the maximum legal rate of interest per annum until paid.

Neither party shall be held responsible for any delay or failure in performance of any part of this Contract to the extent such delay or failure is caused by flood, strike, civil unrest, government or military authority, act of God or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party or its subcontractors provided that such party (a) gives prompt notice and (b) takes reasonable steps to mitigate the duration of the delay or failure of performance. In the event a party's delay or nonperformance continues for a period of at least fifteen (15) calendar days, Lyon may terminate the Contract without liability. Seller's liability for loss or damage to Lyon's material in Seller's possession or control shall not be modified by this clause.

B-9. Warranty of Supplies and Services. All equipment and materials furnished under the Contract shall be new, unless specified otherwise in the Purchase Order, of good quality, fit for its intended purpose, and free from defective workmanship or materials. All equipment, materials and workmanship hereunder shall be guaranteed by the Seller to operate successfully under required tests and for period of not less than (120) days, which period shall commence immediately following the completion of the contract or redelivery of the vessel to its owner. If at any time during said period, any weakness, deficiency, defect, failure, breaking down or deterioration in equipment, materials or workmanship furnished by Seller is discovered, such defective equipment, material or workmanship shall be made good, at Seller's expense, to the requirements of this Contract, the Master Ship Repair Agreement, and the plans and specifications. Seller agrees to assign the benefits of any warranties it provides or receives for work under Contract, direct to Lyon or the vessel owner if requested by Lyon.

B 10. Disputes and Controlling Law. The Contract and all matters relating to or arising from the Contract shall be controlled and governed by the laws of the Commonwealth of Virginia without giving effect to any choice of law provisions. Subject to the subsequent provisions of this paragraph, all disputes, differences, claims or questions arising out of or relating to the Contract and any Work, products or services furnished by Seller and any and all claims arising out of the parties' relationship, shall be finally and solely determined and settled by arbitration in the City of Norfolk, Virginia in accordance with the Commercial Rules of the Society of Maritime Arbitrators, Inc. ("SMA"), and judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. Seller shall be obligated to pay any and all fees or costs assessed by the SMA or the arbitrator in connection with the administration or hearing of the arbitration. Notwithstanding the foregoing provisions of this paragraph, Lyon, at its sole option, may enforce, by bringing litigation in a state or federal court of competent jurisdiction in the City of Norfolk, Virginia, any obligation of Seller, arising under or relating to the Work, or the Contract. In the event Lyon elects to file such litigation, Seller agrees that such a court shall be the exclusive venue for such litigation, and Seller hereby irrevocably consents to the exclusive jurisdiction of such court. In the event such litigation is filed by Lyon, Seller hereby waives, and agrees not to raise in connection therewith, any defenses or claims based on



improper venue, lack of personal jurisdiction, inconvenience of the forum, insufficiency of service or process, or the like. Seller shall not make or file any claim or counterclaim, cause or action or demand in such litigation which is otherwise arbitrable under the terms of this paragraph.

Seller agrees to pay all of Lyon's expenses incurred in enforcing Lyon's rights and Seller's obligations under this Contract, including attorney's fees, expert witness fees, arbitration expenses and cost of litigation.

Seller's failure to initiate an arbitration proceeding within six (6) months of the date Seller's claim or cause of action accrues against Lyon shall constitute a waiver of such claim or cause of action.

Notwithstanding the pendency of any dispute, claim, arbitration or litigation arising under or relating to the Contract, Seller shall proceed diligently with the prompt performance of its obligation to perform the Work. Seller's performance under such circumstances shall be in accordance with Lyon's written instructions.

No litigation arising from or relating to the Contract may be commenced by the Seller more than one year after the last delivery or furnishing of materials and services by the Seller. The Seller agrees, pending resolution of any dispute, to proceed diligently with performance, including any change orders.

If Seller has a claim for money or time which is due to actions of the Government ("Seller's Claim against the Government"), Seller's sole and exclusive remedy is to present the claim to Lyon in the form of a request for an equitable adjustment ("REA"). Lyon will submit the REA to the Government. If the Government grants the REA, the Seller will accept that action as full and final settlement of the Seller's Claim against the Government. If the Government denies the REA in whole or in part, the Seller's sole and exclusive remedy shall be to file an appeal to the Board of Contracts Appeals ("BCA"). Seller shall be responsible for all costs and fees including attorney's fees prosecuting the BCA action and the final decision in the BCA action shall be Seller's sole and exclusive recovery.

B-11. Insurance. The Seller shall, at its own expense, maintain and furnish proof of proper casualty or liability insurance and Workers Compensation Insurance (or statutorily-approved self-insured status for Workers Compensation Insurance), against all claims arising from accidents or casualties to employees, workmen, trespassers, licensees, and all other personnel and property occurring during performance of the Work hereunder; it being expressly understood that the personnel engaged by Seller to complete the Work shall at all times be employees of the Seller and/or its subcontractors and not of Lyon. In case the amount, if any, received from such insurance is not sufficient to cover all liabilities for such accidents or casualties occurring through any act of default or neglect of the Seller and/or any of the Seller's , subcontractors, agents or employees, the Seller shall nevertheless protect and save harmless, Lyon and the vessel from all such liabilities or claims and from any expense or charge in connection therewith. The cost for any and/or all of the above insurance is to be for the account of the Seller.



Seller shall not commence the Work until it has obtained insurance providing the coverage's and limits as specified below; Lyon requires a total limit of \$5,000,000 for General Liability, Automobile Liability, Employers Liability, Ship Repair Legal Liability (if applicable) and Pollution Liability (if applicable). The \$5,000,000 limit may be met by a combination of primary and excess policies. The requirements below assume a \$4,000,000 limit in excess of \$1,000,000 primary limits to meet the total requirement. If the Seller works on or aboard any vessel Seller shall provide Ship Repair Legal Liability coverage as specified below. Seller shall provide the following policies:

(a) Workers Compensation and Employers Liability:

(i) Workers Compensation

Workers Compensation for all Compensation and other Benefits required by all applicable State and Federal law or by governmental authority on account of injury, death, sickness or disease. Coverage will apply to all agents, servants, borrowed servants, statutory employees and employees of Seller and will include coverage under the Longshore and Harbor Workers Act (USL&H).

(ii) Employer's Liability:

\$1,000,000 Bodily Injury by Accident
\$1,000,000 per person by Disease
\$1,000,000 aggregate by Disease

Seller and Seller's insurer will waive subrogation against Lyon. If Seller is a Labor Contractor, Seller will also provide an Alternate Employer Endorsement in favor of Lyon.

(b) General Liability

Coverage will include (but not be limited to) premises and operations liability, products and completed operations liability, broad form contractual liability, broad form property damage liability, and liability for independent contractors (if any) for both Bodily Injury and Property Damage liability. Coverage will include Personal Injury and Advertising Injury Liability.

Seller and their insurer will name Lyon as Additional Insured under this policy and a waiver of subrogation will apply in favor of Lyon. Seller's policy will be primary and non-contributory to any other valid and collectible insurance in place for or available to Lyon. Coverage will be provided through ISO form CG 00 01 04 13 or materially equivalent. Coverage will be on a combined single limit basis for Bodily Injury and Property Damage Liability with no less than the following limits:

\$1,000,000 per occurrence
\$2,000,000 General Aggregate
\$1,000,000 Product-Completed Operations Aggregate
\$1,000,000 Personal. & Advertising Injury



\$ 50,000 Fire Damage Legal
\$ 5,000 Medical Payments (Optional)

(c) Automobile Liability

Coverage to be provided for all owned, non-owned, hired or borrowed vehicles operated by Contractor, or Contractor's employees or representatives. Policy will provide coverage for Bodily Injury and Property Damage Liability with limits of not less than **\$1,000,000** per occurrence for Bodily Injury and Property Damage. Seller and their insurer will name Lyon as additional insured and waive subrogation against Lyon.

(d) Ship Repair Legal Liability

If the Seller works on or aboard any vessel Seller shall provide Ship Repair Legal Liability coverage with limits of not less than **\$1,000,000**, with additional limits provided by the Umbrella Excess policy in "e" below. Coverage shall be provided under standard marine insurance forms materially equivalent to the London or American Institute Ship Repairers Legal Liability forms. It is permissible to combine this coverage with the General Liability ("b" above) without providing additional limits.

(e) Umbrella or Bumbershoot Excess Liability

Seller will provide an Umbrella excess Liability policy with limits not less than \$4,000,000 per occurrence. This policy will be excess of Items "a-2" (Employers Liability), "b" (General Liability), "c" (Automobile Liability) and "d" (Ship Repair Legal Liability) so as to give a combined total limit of \$5,000,000 for each of these coverages as required.

Seller shall, before commencing work, provide Lyon with certificates indicating compliance herewith, confirming that the subcontractors insurance policies have been endorsed to provide that each insurer has agreed to give Lyon 30 days written notice of cancellation or intent not to renew, a waiver of subrogation and that Lyon has been added to each policy, excepting only the workers' compensation policy, as an additional insured with respect to the performance of the Seller. Acceptance of a certificate by Lyon shall not release or decrease the obligation of the Seller hereunder.

Before entering any Lyon's site the Seller must furnish evidence of environmental pollution liability insurance if any of the following conditions apply:

- Transportation of or storage at the Lyon's job site, of any hazardous material or hazardous waste in or out of a Lyon's job site.
- Blasting, painting or coatings application.
- Gas Freeing
- Removal or installation of any hazardous material.

All vehicles entering or departing the Lyon's job sites carrying any hazardous materials must provide evidence of environmental pollution liability insurance on their Certificate of Insurance held by Lyon. All vessels contracted by Seller entering any Lyons site to



accomplish work on the behalf of the Lyon, for repairs or servicing must provide evidence of environmental pollution liability insurance. If Seller's uses a vessel as part of the Work at any Lyon's site, Seller must provide evidence of environmental pollution insurance.

If Seller owns, rents, leases, charters or utilizes vessels, barges or other marine equipment to perform work for Lyon, Seller in addition to all other insurance coverages required herein, shall carry environmental pollution insurance and with respect to such vessels or marine equipment, Hull Insurance. Environmental pollution insurance may be in the form of a Contractors Environmental Pollution liability policy or, in the case of a vessel, Vessel Environmental Pollution liability policy. The minimum limits for environmental pollution liability insurance shall be \$5,000,000. Hull insurance on the vessels, barges, and other marine equipment shall be for the full value thereof. If Seller utilizes any vessel or barge, etc. is shall also obtain Protection and Indemnity Insurance with primary limits of \$1,000,000 per occurrence, and including tower's liability for any tugs utilized, and excess liability of \$4,000,000, which excess limits may be included as part of the Umbrella Excess Liability in Section B-11-e.

B-12. Indemnity. Seller agrees to indemnify, defend and hold Lyon, any parent or affiliate entities and their respective officers, directors, agents, and employees, harmless from any and all claims, demands, damages, liabilities and costs (including reasonable attorney's fees incurred in defense thereof) for death or injury to any person or person(s) without limitation, including death or injury to employees of Seller or damage or destruction of any property, caused by, related to, arising from or in any way connected with (i) the provision of goods, services, material and/or equipment to Lyon by Seller or its subcontractors or agents, (ii) the performance by Seller or its subcontractors and the officers, employees and agents of any of them under the Contract, (iii) any act of negligence, willful misconduct or omission by Seller and the officers, agents, and employees, subcontractors or agents thereof, or (iv) any liability by reason of any claim asserted by an agent, subcontractor or employee of Seller and regardless of whether any such death, injury or property damage is caused in whole or in part by Lyon or their respective officers, directors, agents or employees.

B-13. Third Party Indemnification. Seller shall indemnify and hold harmless and, if requested, defend Lyon, Lyon's parent and affiliates and each of their officers, directors, and employees against any claims, losses or expenses (to include reasonable attorney's fees) for: (i) property loss or damage and personal injury or death which may be sustained by Seller or by any of its employees, agents, or subcontractors, at any tier, and (ii) all risk of loss or damage to property and personal injury, disease, or death which may be sustained by third parties, Lyon, Lyon's parent and affiliates, or each of their agents, employees or subcontractors, as a result of Seller's performing this Purchase Order.

B-14. Waiver of Maritime Liens and Lien Waivers Generally. Neither the Seller nor any of its subcontractors shall be entitled to a maritime lien upon any vessel as a result of Work under this Contract. The Seller agrees that nothing in or contemplated by this Contract creates or shall be construed to create any right to assert a maritime lien on the vessel



Seller shall provide lien waivers in the form required by Lyon or any owner or prime contractor. Seller shall also provide similar lien waivers from all subcontractors and vendors of any tier who provide goods and/or services related to the Work in an aggregate value in excess of \$5,000 upon request by Lyon. If Seller does not provide lien waivers in accordance with this section, or if Lyon otherwise reasonably determines that Seller is not timely paying its subcontractors and suppliers, then Lyon shall have the right to issue joint checks, make payments directly to Seller's subcontractors or suppliers, or to take other reasonable actions in connection with payment, in order to reasonably protect Lyon's interest. All payments made by Seller by joint check or directly to Seller's subcontractors or suppliers shall reduce the amounts due Seller under the Contract. It is agreed that no payment hereunder shall be made to Seller, except at Lyon's option, until and unless lien waivers have been provided in accordance with this section.

Payment to Seller by Lyon shall not constitute acceptance of the Work by Seller or any other party in interest.

- B-15. Proprietary Information.** For the purposes of this paragraph, the term "Proprietary Information" shall mean all information provided by the Lyon to Seller during the performance of the Contract and all improvements, modifications and derivations thereto and therefrom, except to the extent that such information is clearly in the public domain. Seller agrees: (i) to hold Proprietary Information in confidence and to protect it from release to third parties; (ii) to disclose Lyon's proprietary information only to Seller's employees who have a need-to-know and only after they have been made aware of the proprietary nature of the information; and (iii) to use such Proprietary Information solely for the purposes of performing the Work. The restriction on release to third parties contained in this paragraph will not apply to release by the Seller to subcontractors that Seller uses in performing the Work provided the Seller includes in such subcontracts a provision binding any subcontractors to the terms of this paragraph.
- B-16. Order of Precedence.** In the event of any conflict between or among any of the documents that constitute the Contract, the order of preference shall be: (1) Purchase Order exclusive of appendices, drawings, specifications and other plans and documents, (2) appendices, (3) drawings and specifications, (4) other plans or documents referenced in the Purchase Order, (5) these Terms and Conditions and any exhibits or attachments hereto. Seller shall immediately bring any inconsistencies or conflicts to the attention of the Lyon in writing.
- B-17. Site Conditions.** If Seller is required to install or supervise the installation of equipment or to perform Work at Lyon's or its customer's site, Seller shall inspect the location of the Work at Lyon's or its customer's site and be familiar with its condition at the time of award of this Purchase Order. In no event shall either Seller's failure to inspect the site prior to the award of this Purchase Order, or any circumstance that Seller should reasonably have discovered through such site inspection constitute a basis for any claim for increased cost or additional time of performance.
- B-18. Late Delivery.** Except otherwise provided in the Purchase Order, Seller shall at all times, proceed diligently to properly perform the Work or supply product. Seller shall provide



Lyon prompt written notice of any events that could cause delay in delivery under the Purchase Order. This notice shall be informational only, and shall in no way affect the legal rights or remedies available to Lyon.

- B-19. Loss or Damages to Goods.** Unless otherwise specified in the Purchase Order, risk of loss or damage to the goods furnished by Seller shall remain with the Seller until delivery to the Lyon at the address specified in the Purchase Order (i.e. “FOB Destination”).
- B-20. Independent Contractor.** Seller is an independent contractor, and the Contract does not create an agency, partnership, or joint venture relationship between Seller and Lyon. Seller shall; (i) have exclusive control and direction over its employees’, subcontractors’ and agents’ performance of the Work; and (ii) be responsible for all payroll functions for its employees. No persons employed by Seller or Seller’s subcontractors shall be deemed to be an employee or agent of Lyon for any purpose. Lyon assumes no liability for Sellers personnel or those of Seller’s subcontractors.
- B-21. Bankruptcy.** In the event the Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, the Seller agrees to furnish to Lyon, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceeding. The notification shall identify the court in which the proceedings are pending and shall identify the court in which the petition was filed, with a listing of all Lyons’ Orders against which final payment has not been made. This obligation remains in effect until final payment under this Purchase Order.
- B-22. Continuing Terms and Survivability.** The Proprietary Information, express and implied warranty obligations and indemnity clauses contained herein shall survive termination or cancellation of the Purchase Order for three (3) years. If any part, term or provision of this Purchase Order contravenes a law or a federal, state or local government having jurisdiction over this Purchase Order, that part, term or provision shall be inoperative in that jurisdiction, and the validity of the remaining portions or provisions shall not be affected thereby.
- B-23. Assignment.** Seller may not subcontract the Work in whole or in part nor assign all or any portion of the Contract, nor may any assignment of any money due or to become due be made by the Seller without, in each case, the prior written consent of Lyon. The insurance requirements designated in Clause B 11 are required by the subcontracted company upon receipt of written consent of Lyon.
- B-24. Government Contracts: Employee Notice Clause .** If the Contract is part of Lyon’s work under or pursuant to a U.S. Government contract or subcontract, Seller shall, to the extent consistent with the law, include the language set forth in, Department of Labor-29 CFR Appendix A to Subpart A of Part 471, in every Government contract, other than those contracts to which exceptions are applicable as stated in 29 CFR Part 471.3.



B-25. DFARS Compliance and Controlled Unclassified Information (CUI) Acknowledgment.

All contractors that provide goods and/or services in connection with U.S. Department Defense (“DoD”) programs are required by law to comply with Defense Federal Acquisition Regulation Supplement (“DFARS”) 252.204-7012, which mandates the protection of all Covered Defense Information (“CDI”) that is “collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance” of a DoD contract. This obligation is required to be flowed down to all subcontractors (including commercial items suppliers) at every tier. In addition to protecting controlled technical information, the DFARS clause expansively relies upon the National Archives’ Controlled Unclassified Information (“CUI”) Registry to broadly include (for example) most export controlled data, cost and pricing data, law enforcement information, and personally identifiable information. The DFARS clause also specifically mandates that companies meet the IT security standards detailed in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, and imposes various prompt reporting obligations in the event of a cyber-incident. Seller agrees to and shall comply with DFARS 252.204-7012. Attachment 1 is an acknowledgement which is intended to confirm Seller is aware of these mandatory requirements, and to confirm that Seller will comply with the DFARS obligations. If Seller fails to sign and return Attachment 1 within one week of receiving it, Lyon may terminate the Contract without any liability to Seller and Lyon may bar Seller from conducting future business with Lyon.

B-26. Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses.

If this Contract is subject to or part of a US Government contract, the clauses listed in the government contract, which Lyon may post on its website or attach to the Purchase Order will apply to this Contract and be effective as of the date of the U.S. Government prime contract identified in the Purchase Order (“Prime Contract”) and are hereby incorporated into the Contract by reference. As used in the FAR and DFAR clauses, the terms “Government” and “Contracting Officer” shall mean “Seller”. The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses in the Prime Contract are incorporated herein by reference, with the same force and effect as if they were stated directly herein and are applicable, including any notes following the clause citation to this Contract. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause in any FAR, DFAR or the Prime Contract shall mean the "Disputes" clause of the Prime Contract. The Prime Contract number is referenced in the Purchase Order. FAR and DFARS clauses applicable to the Purchase Order can be found at beta.SAM.gov or Lyon’s web site under the tab “Subcontractors”. Lyon’s provision of any FAR and DFAR clauses is offered as a convenience only and Seller should refer to the official US Government publications for a definitive expression of any such regulations.

B-27. Right To Adequate Assurances. When reasonable grounds for insecurity arise with respect to Seller's performance, Lyon may in writing demand adequate assurance of due performance. Seller’s failure to provide within three (3) days of Lyon’s demand such



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assurance of due performance as is adequate under the circumstances will constitute a default of the Contract.

B-28. Immigration. It is the intent of Lyon to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the “Act”), and such other acts, laws, rules and regulations as may be issued from time to time by federal, state and local authorities which have the intent and purpose of immigration and control. Lyon’s goal is to achieve such compliance, while at the same time respecting all laws protecting the privacy rights of individuals, all in a fashion that will not in any way wrongfully discriminate against any individuals. It is Lyon’s intent that only legal labor shall be employed on Lyon job sites, whether the labor is performed by Lyon employees or by its contracting parties of all tiers. Seller shall comply with all laws, rules and regulations regarding the employment of labor. Seller’s compliance with the provisions of this section concerning compliance with immigration and control provisions shall be a condition precedent to the Seller’s right to receive payment on under the Contract.

By signing these Terms and Conditions, Seller accepts and agrees to these Terms and Conditions and represents that Seller is and will remain in complete compliance with all of the above listed terms and conditions. This document will remain on file in Lyon’s Purchasing Department and will be deemed incorporated in and a part of all Purchase Orders between Lyon and Seller. In the event that Lyon changes any of the provisions of these Terms and Conditions, Seller will be provided an updated version for review and execution and such updated Terms and Conditions will be effective beginning on the date that Seller’s signs such updated Terms and Conditions. If Seller does not agree to sign such updated Terms and Conditions, then the Terms and Conditions previously in force with Seller shall remain in force for all active Purchase Orders. If any change or update to Lyon’s Terms and Conditions is required by applicable law and Seller refuses to agree to and accept such updated Terms and Conditions, then Lyon may immediately terminate all Purchase Orders with no liability to Seller except for materials and services actually performed and delivered to Lyon as of the date of such termination.

Company _____

Signature _____

Name _____

Title _____

Date _____