

**MIDD Terms and Conditions**

The Mare Island Dry Dock LLC (MIDD) Terms and Conditions form a part of, and are fully incorporated (as though fully set forth therein) into the Purchase Order(s) from time to time executed and delivered on behalf of MIDD to the subcontractor or supplier. Each PO and any referenced attachments are included and incorporated as part of this Agreement and this Agreement and any exhibits attached hereto contain the entire agreement of the parties and supersede all prior negotiations, agreements, and understandings with respect thereto. If a conflict exists between the MIDD Terms and Conditions and the related Purchase Order the Purchase Order shall govern. This agreement shall remain in full force and effect unless and until later revised.

**Acknowledgement of Purchase Order:**

The execution of a Purchase Order by MIDD constitutes an offer by MIDD to Supplier on the terms and conditions therein stated, as well as the terms and conditions herein. Supplier shall mean each and every subcontractor of any tier or material provider of any products sold or services rendered to MIDD. This offer is valid for a period of thirty (30) days from the date thereof unless revoked by MIDD prior to acceptance or rejected by Supplier. Supplier's acceptance of the Purchase Order is limited to the terms and conditions thereof, and the within the terms and conditions, unless MIDD expressly agrees to any other or additional proposal or term in writing. Supplier may accept such offer by signing the applicable Purchase Order and returning a signed copy prior to beginning work or by commencement of performance of the work to be done hereunder within the acceptance period or by acceptance of payment hereunder.

**Price:**

Supplier's price shall not be higher than that last quoted or charged to MIDD unless otherwise specifically agreed in writing by MIDD. Discount terms applicable to any applicable Purchase Order are as shown in the schedule. Delays in receiving Supplier's invoice, and also errors and omissions on invoices shall be grounds for withholding settlement without losing discount privilege. All applicable federal, state and local taxes are included in the Purchase Order unless separately agreed to in writing by MIDD.

**Invoices:**

MIDD shall pay Supplier as per the terms of any applicable purchase order, as may be modified in accordance with the terms and conditions herein. No invoices shall be paid by MIDD unless the work and/or supplies covered by the invoice have been inspected and accepted as herein provided. Payment terms shall be net 30.

Supplier shall place the applicable Purchase Order number on all correspondence, packing slips, invoices and packages pertaining to this Purchase Order. Supplier shall address all correspondence concerning the applicable Purchase Order (except billing invoices) to the attention of MIDD's Purchasing Agent. Supplier shall forward all invoices in duplicate to the attention of MIDD's Accounts Payable and shall attach transportation receipts to any invoice that included transportation charges. Each invoice shall certify that the goods and services covered thereby were produced in compliance with all applicable requirements of the Fair Labor Standards Act as amended and the regulations and orders of the United States Department of Labor issued thereunder, and the Federal Acquisition Regulations (FAR) as amended.

**Lien Waiver**

IT IS UNDERSTOOD AND AGREED by the parties hereto that MIDD is required to waiver and release any and all liens and rights against this vessel/hull upon which work will be performed and for which labor materials will be supplied, and that as an express condition precedent of Supplier being permitted to perform services and provide labor or materials with respect to the vessel/hull, Supplier hereby agrees and representations that:

1. Supplier is undertaking work solely on the basis of MIDD's credit and upon its understanding that it will have no lien, arrest or in rem rights whatsoever against the vessel/hull, and that it will under no circumstances attempt to exercise any such rights, under state, federal or administrative statutory or common law, or in equity against the vessel/hull;
2. Supplier waives any rights that it may have to lien, arrest, or proceed in rem against the vessel/hull under state, federal or administrative statutory or common law or in equity against the vessel/hull; Supplier hereby agrees to fully and forever waive and release any liens, arrests and rights in rem against the vessel/hull which it may have at any time by law, in admiralty and/or equity for any work performed or services supplied hereunder;

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3. Supplier further agrees that any suppliers and/or Subcontractors that it engages shall be required by Supplier to waive any and all such liens and rights as a pre-requisite to Supplier performing services on the vessel/hull.
4. Supplier hereby agrees to defend and indemnify MIDD from and against any and all liabilities, losses, damages and costs (including reasonable attorney's fees) that may arise out of the failure of Supplier's failure to pay its Subcontractors/Suppliers and in the event it or any Subcontractor/Suppliers pursue any liens, arrests, or in rem proceedings with respect to work performed on this vessel/hull.

#### **Subcontractor Access Agreement**

**Supplier is an Subcontractor that must agree to and sign the MIDD Subcontractor Access Agreement prior to being granted access to facility for the purpose of supplying services pursuant to any applicable Purchase Order.**

Supplier hereby agrees to defend, indemnify and hold harmless MIDD, its officers, directors, employees, owners, subsidiaries, affiliates, insurers and agents, against any and all suits, actions, claims, costs or demands (including without limitation, suits, action, claims, costs or demands resulting from death, personal injury or property damage, including reasonable counsel fee and all other expenses) arising out of and/or in any way related to Supplier's work brought by any of Supplier's employees and/or Subcontractors engaged by Supplier for any death, personal injury or property damage (a) caused by any third party(ies), during the period Supplier performs the Work on the Property, and (b) caused by Supplier and/or its employees or subcontractors.

#### **Safety:**

1. Supplier shall comply with all safety requirements, policies, procedures and rules established from time to time by MIDD and comply with "**MIDD General Safety Rules for Subcontractors / Suppliers**", as well as those of any and all agencies having jurisdiction over the work, and in the event it fails to do so, Supplier, it's Subcontractors and suppliers and employees thereof may be barred from MIDD's shipyard.
2. Supplier and its Subcontractors must follow all applicable safety rules and regulations, including OSHA Regulations, 29 CFR 1910, 1915 applicable to the shipbuilding industry. Supplier and Subcontractors must maintain copies of these regulations on the work site and in the event it does not, it may request them at the MIDD office. Supplier is solely responsible for the safety of its employees and its Subcontractors/suppliers.
3. The Supplier shall inspect all work areas and use its best efforts to prevent accidents, injury or damage to all employees, persons and property.

#### **Prime Contractual Flow Down:**

The Supplier shall assume toward MIDD, so far as the Subcontract Work is concerned, all the obligations and responsibilities which MIDD assumed toward the Owner of any vessel/hull upon which Supplier is engaged to provide goods and/or services by MIDD pursuant to any applicable Purchase Order. Supplier further agrees that any warranty which MIDD owes Owner by virtue of the Main Contract (or which arises by operation of law) and which pertains to the Work, shall be owed to both Owner and MIDD by Supplier. Further, the Supplier will be bound by any provisions in the Main Contract for liquidated damages, and shall pay such damages for any delay to the extent caused by, or arising out of the acts or omissions of Supplier.

In addition to the MIDD Terms and Conditions, whenever this Purchase Order is issued in connection with a United States Government contract all Regulations, Supplemental Terms and Conditions and Provisions of the Government Contract will apply and are incorporated herein by reference (as though fully set forth therein) into the Purchase Order. All Supplemental Terms and Conditions and provisions of the Government Contract are made available to the Subcontractor through the password protected MIDD subcontractor contract portal.

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#### **Subcontracting:**

Supplier agrees to obtain MIDD's approval before subcontracting any applicable Purchase Order or any substantial portion thereof, provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw material.

#### **Insurance**

Prior to the commencement of any work or the ordering of any material, Supplier must provide certificates of insurance for the coverage's as indicated and in accordance with the MIDD Subcontractor Access Agreement. **Failure to provide the required certificates of insurance and a signed Subcontractors Access Agreement prior to the commencement of work and ordering of any materials may void the Purchase Order and the Subcontractors Access Agreement. Insurance requirements are specifically set forth in the Subcontractor Access Agreement.**

If Supplier shall, by any act or omission, vitiate or invalidate any of the aforesaid policies required to be obtained by such party, Supplier shall indemnify MIDD to the extent MIDD otherwise would have been covered or protected by said insurance. Supplier, on behalf of their insurance carrier, hereby waives any right to subrogation against MIDD.

#### **Independent Contractor**

Supplier agrees that he is an independent contractor in the performance of any work hereunder and that neither it nor its employees shall be considered employees of MIDD. MIDD shall not be responsible for the direct payment of any of Supplier's withholding taxes, social security payments, payments under worker's compensation or other insurance premiums, or other charges of any kind or nature, except as specifically outlined herein.

Supplier hereby certifies that it will comply with the Fair Labor Standards Act and will deduct and pay over to the proper governmental authority, any withholding taxes or similar assessments which an employer is required to deduct and pay over, and Supplier accepts exclusive liability for all payroll taxes, unemployment benefits, state and federal workers' compensation benefits, and contributions imposed by any federal, state or other governmental authority, covering its agents or employees.

#### **Additional Work**

No "Additional Work" may be performed by Supplier or Subcontractors without prior approval of the Project Manager, and Supplier's failure to obtain prior approval for additional work may lead to its forfeiting payment for any such additional work at MIDD's sole discretion.

The Supplier further agrees not to assign or sublet the Work or any portion thereof without the written consent of MIDD.

#### **Changes and Work Suspension:**

MIDD may at any time by written order and without notice to any sureties or assignees order Supplier to suspend delay or interrupt all or any part of the work to be done hereunder and may make changes within the general scope of the Purchase Order including any one or more of the following (1) drawings designs or specifications (2) method of shipment or packing (3) quantities of articles to be furnished (4) place of delivery and (5) delivery schedules. If any such order causes an increase or decrease in the cost of or the time required for the performance of any part of the work under the Purchase Order then equal adjustment shall be made in the price or delivery schedule or both and the Purchase Order shall be modified in writing accordingly. Any claim by Supplier for adjustment under this clause not asserted in writing within thirty (30) days of receipt by Supplier of the notification of change shall be waived. Supplier shall proceed with the Purchase Order as changed whether or not a claim is filed. Failure to agree to any adjustment shall be a dispute and handled in accordance with the terms herein concerning disputes.

#### **Inspection and Acceptance:**

All goods or work furnished hereunder by Supplier shall be subject to final inspection at destination notwithstanding any previous inspection. All Subcontract work is subject to the inspection and acceptance by the MIDD QA Manager. In addition to its rights under any other provisions hereof and its remedies for any breach of this Purchase Order, MIDD may reject or direct

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the prompt correction in place of item or work which is (are) defective in material or workmanship or otherwise fails to meet the requirement of any applicable purchase order. MIDD may at Supplier's expense prepare for shipment and ship rejected items to Supplier or may require Supplier to remove them. If Supplier fails promptly to remove defective items or provide promptly to replace or correct them, MIDD may replace or correct such items at the expense of Supplier. If minor corrections are required for any nonconforming items MIDD, at its option and without prior notice to Supplier may make or have made such corrections at Supplier's risk and expense.

**Cancellation:**

MIDD reserves the right to cancel all or any part of the undelivered portion of any applicable Purchase Order if Supplier does not make deliveries as provided in this order or if Supplier breaches any of the terms hereof including the warranties of Supplier MIDD shall also have the right to terminate said Purchase Order or any part thereof in the event of the happening of any of the following insolvencies of Supplier filing, of a voluntary petition in bankruptcy, filing of an involuntary petition to have Supplier declared bankrupt provided it is not vacated within thirty (30) days from the date of filing, the appointment of a receiver or trustee for Supplier provided each appointment is not vacated within thirty (30) days from the date of such appointment, or the execution by Supplier an assignment for the benefit of creditors. The remedies provided in this section shall be cumulative and additional to any other or further remedies provided in law or equity MIDD may terminate said Purchase Order for Supplier's default or for MIDD's convenience in addition to the foregoing in accordance with FAR (Federal Acquisition Regulations).

**Warranty:**

The Subcontractor or supplier agrees to accept that same warranty period required in the prime contract between MIDD and the Customer. The Supplier shall promptly perform such alterations, removals, reinstallation, repair or replacement as may be necessary to honor and remedy such breach of the warranties to the satisfaction of MIDD, MIDD's customer, and regulatory bodies at Subcontractor or suppliers sole cost and expense. Such obligation shall extend to any and all goods or workmanship which may be found to be defective within twelve (12) months after delivery or six (6) months after the physical delivery of the vessel or other item to MIDD's customer to which this Purchase Order pertains, whichever occurs last. All costs and damages incurred by Prime Contractor, Prime Contractor's customer or Supplier in connection with a breach of any warranty shall be borne by Supplier. Any inspection, test, acceptance, or use of the goods furnished thereunder shall not diminish Vendor's warranty obligations.

MIDD's failure to make an inspection or test or to discover defective workmanship, materials, or equipment shall not relieve Supplier from any responsibility hereunder and payment of any funds by Prime Contractor shall not constitute a waiver or acceptance of such defects.

**MIDD Owned or Furnished Material:** Supplier assumes complete liability for every MIDD owned or MIDD furnished tooling, articles or materials unless furnished to Supplier on a charge basis in connection with a Purchase Order and Supplier agrees to pay for all such tooling, articles or materials spoiled by it or not otherwise satisfactorily accounted for subject., however, to the special provisions of this Purchase Order in the event a Government type Purchase Order as shown on the face of this Purchase Order. Title to the aforesaid MIDD owned or MIDD furnished tooling, articles or materials shall at all times remain in MIDD.

**EEO**

Supplier, its suppliers and Subcontractors shall comply with any and all applicable federal, state and administrative statutes, rules and regulations including but not limited to the Equal Employment Opportunity Act, in accordance with Executive Order 11246, as amended: Section 503 or the Rehabilitation Act of 1973, as amended, 38 USC 2012 (Vietnam Era Veterans Readjustment Assistance Act of 1974); and implementing regulations thereof; as well as any other applicable employment and/or safety and workplace statutes rules and regulations.

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**Freight:**

All material sent to MIDD must be shipped freight pre-paid with a reference purchase order number. Failure to do this will result in MIDD not accepting shipment.

**PTD:**

Provisioning Technical Documentation (PTD/ILS) is required for all equipment/material overhauled or installed in accomplishment of this contract. If the material or services included in this Agreement requires PTD/ILS, Supplier will furnish the required documentation to the Project Manager. This Agreement is not considered complete until all required documentation is provided.

**Assignment and Delegation:**

Any attempt to or any actual assignment of Supplier's rights or delegations of Supplier's duties under any applicable Purchase Order without the prior written consent of MIDD shall be null and void and MIDD may at MIDD's election terminate this Purchase Order. The foregoing notwithstanding claims and or monies due or to become due under said Purchase Order may be assigned by Supplier without such consent provided, (a) Supplier shall promptly furnish MIDD with two signed copies of any such assignment, (b) and payment to an assignee of any such claims shall be subject to set-off or recoupment for any present or future claim(s) which MIDD may have against Supplier, except to the extent that any such claims have been expressly waived in writing by MIDD. MIDD further reserves the right to make direct settlement and or adjustments in price with Supplier notwithstanding any such assignment without notice to the assignee.

**Disputes:**

In the event of any disputes between the parties regarding the rights or obligations under any applicable Purchase Order Supplier may serve upon MIDD a written demand for a final decision with respect to such dispute within ninety (90) days following receipt of such demand, or upon its own initiative at any time. MIDD may serve upon Supplier a final written decision (expressly defined as such) as to the disposition of the disputed matter. If within thirty (30) days following said decision Supplier does not give MIDD written notice of Supplier's intention to contest said decision in a court of competent jurisdiction, said decision shall be final and binding upon the parties. Supplier shall commence no action at law or in equity against MIDD in connection with said Purchase Order unless MIDD has made a final decision. No action by MIDD within ninety (90) days following MIDD's receipt of Supplier's written demand shall be deemed a final adverse decision Supplier shall proceed diligently with performance under this Purchase Order and in accordance with the instructions and decision of MIDD.

**Force Majeure:**

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, or inability to obtain labor, materials, power, equipment, or transportation (collectively referred to herein as "Force Majeure"). Each party shall use its reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.

**Cost of Enforcement:**

Supplier agrees to pay all costs and expenses (including reasonable attorney's fees) which MIDD may incur in enforcing any of the terms and conditions of this Purchase Order or on account of Supplier's breach or failure to perform any of the terms and conditions of this Purchase Order.

**Related Attachments**

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- Subcontractor Access Agreement
- MIDD Subcontractor/Supplier Safety Rules
- MIDD Password Protected Subcontractor Contract Portal
- MIDD Visitor Access Request

Acceptance of Terms and Conditions by Authorized Representative of Supplier:

Vendor Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_