

DIESELTECH, LLC
GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR
SUBCONTRACTS/PURCHASE ORDERS UNDER A U.S. GOVERNMENT PRIME OR COMMERCIAL
CONTRACT

(Dieseltech, Llc Ts & Cs)

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SECTION I: GENERAL PROVISIONS

1 ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with Exhibits, Attachments, and any Task Order(s) issued hereunder, and constitutes the entire agreement between the parties.
- (b) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- (c) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment are objected to by DIESELTECH and have no effect unless expressly accepted in writing by DIESELTECH

2 APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the laws of the State from which this Contract is issued, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full

text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.

- (b) (1) Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with of all applicable guidelines and directives of any local, state, and/or federal governmental authority.
 - (2) If: (i) DIESELTECH's contract price or fee is reduced; (ii) DIESELTECH's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on DIESELTECH; or (iv) DIESELTECH incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, DIESELTECH may proceed as provided for in (3) below.
 - (3) Upon the occurrence of any of the circumstances identified in (2) above, DIESELTECH may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with Seller, or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.
- (c) Seller agrees that the intent of these General Provisions and FAR Flowdown Provisions for Subcontracts/Purchase Orders are applicable for both Commercial Items as defined at FAR 2.101 and Non-Commercial Items under a U.S. Governmental Prime Contract, subject to and including any corresponding agency flowdowns which would be applicable to this Contract, inclusive of Federal Supply Schedule - Most Favored Customer Pricing Objectives – Part 538.270. Timeframes noted in these General Provisions govern.
 - (d) Seller shall provide to DIESELTECH with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.

3 ASSIGNMENT

- (a) Any assignment of Seller's Contract rights or delegation of Seller's duties shall be void, unless prior written consent is given by DIESELTECH. Seller may assign rights to be paid amounts due, or to become due, to a financing institution if DIESELTECH is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of DIESELTECH against Seller. DIESELTECH shall have the right to make settlements and/or adjustments in price without notice to any assignee.

4 CHANGES

- (a) The DIESELTECH Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in anyone or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) 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 this Contract, DIESELTECH shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Seller must assert its right to an equitable adjustment under this paragraph within thirty (30) days from the date of receipt of the written change order. If the Seller's proposal includes the cost of property made obsolete or excess by the change, DIESELTECH shall have the right to prescribe the manner of disposition of the property.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

5 COMMUNICATION WITH DIESELTECH CUSTOMER

- (a) DIESELTECH shall be solely responsible for all liaison and coordination with the DIESELTECH customer, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

6 CONTRACT DIRECTION

- (a) Only the DIESELTECH Procurement Representative has authority to make changes in or amendments to this Contract. Changes and amendments must be in writing.
- (b) DIESELTECH engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the DIESELTECH Procurement Representative.

7 DEFAULT

- (a) DIESELTECH, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as DIESELTECH may authorize in writing) to cure any such failure after receipt of notice from DIESELTECH. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) Seller shall be compensated only for Work actually delivered and accepted. DIESELTECH may require Seller to deliver to DIESELTECH any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. DIESELTECH and Seller shall agree on the amount of payment for these other deliverables.
- (c) Seller shall continue all Work not terminated.
- (d) If after termination under paragraph (a), it is determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

8 DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order" or "Task Order" or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "DIESELTECH" means DIESELTECH LLC., acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of DIESELTECH LLC. is identified on the face of this Contract, then "DIESELTECH" means that subsidiary or affiliate.
- (d) "DIESELTECH Procurement Representative" means a person authorized by DIESELTECH's cognizant procurement organization to administer and/or execute this Contract.
- (e) "PO" or "Purchase Order" means this Contract.
- (f) "Seller" means the party identified on the face of this Contract with whom DIESELTECH is contracting.

- (g) "Task Order" means a separate order issued under this Contract.
- (h) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

9 DISPUTES

- (a) All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by DIESELTECH.

10 ELECTRONIC CONTRACTING

- (a) The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any Acknowledgement thereof, on the basis that this Contract or Acknowledgement contains an electronic signature.

11 EXPORT CONTROL

- (a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) Seller agrees to notify DIESELTECH if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) Seller shall immediately notify the DIESELTECH Procurement Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (d) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (e) Where Seller is a signatory under a DIESELTECH export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to the DIESELTECH Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Seller's performance under this Contract.
 - (1) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

12 EXTRAS

- (a) Work shall not be supplied in excess of quantities specified in this Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

13 FURNISHED PROPERTY

- (a) DIESELTECH may provide to Seller property owned by either DIESELTECH or its customer (Furnished Property).
Furnished Property shall be used only for the performance of this Contract.

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- (b) Title to Furnished Property shall remain in DIESELTECH or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify DIESELTECH of any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At DIESELTECH's request, and/or upon completion of this Contract, the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by DIESELTECH.
- (e) The Government Property clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government Furnished Property, or property to which the Government takes title under this Contract.

14 GRATUITIES/KICKBACKS

- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by Seller, to any employee of DIESELTECH for the purpose of obtaining or rewarding favorable treatment as a supplier.
- (b) By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

15 INDEPENDENT CONTRACTOR RELATIONS

- (a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to DIESELTECH.
- (b) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

16 INFORMATION OF DIESELTECH

- (a) Information provided by DIESELTECH to Seller remains the property of DIESELTECH. Seller agrees to comply with the terms of any proprietary information agreement with DIESELTECH and to comply with all proprietary information markings and restrictive legends applied by DIESELTECH to anything provided hereunder to Seller. Seller agrees not to use any DIESELTECH provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of DIESELTECH.

17 INSPECTION AND ACCEPTANCE

- (a) DIESELTECH and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. DIESELTECH's final inspection and acceptance shall be at destination.
- (c) If Seller delivers Non-conforming Work, DIESELTECH may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to Seller.
- (d) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

18 INSURANCE/ENTRY ON DIESELTECH PROPERTY

- (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of DIESELTECH or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain for the performance of this Contract worker's compensation, comprehensive general liability, bodily injury and property damage insurance" in reasonable amounts, and such other insurance as DIESELTECH may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall provide DIESELTECH thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Sellers of its obligations to procure and maintain the required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name DIESELTECH as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of DIESELTECH and is not contributory with any insurance, which DIESELTECH may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.
- (b) Seller shall indemnify and hold harmless DIESELTECH, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.

19 INTELLECTUAL PROPERTY

- (a) Seller warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify, and hold harmless DIESELTECH and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- (b) All data, copyrights, reports, and works of authorship, DEVELOPED IN PERFORMANCE OF THIS CONTRACT, shall be the sole property of DIESELTECH, shall be used by Seller solely in work for DIESELTECH. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, Seller hereby assigns to DIESELTECH the ownership of copyright in the deliverable items and DIESELTECH shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available in the deliverable items. Seller agrees to give DIESELTECH or its designees all assistance reasonably required to perfect such rights.

20 NEW MATERIALS

- (a) The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

21 PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the DIESELTECH Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

22 PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) DIESELTECH's receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. DIESELTECH shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.

- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by DIESELTECH or Seller not to have been properly payable, and shall also be subject to reduction for overpayments. Seller shall promptly notify DIESELTECH of any such overpayments found by Seller.
- (c) Payment shall be deemed to have been made as of the date of mailing DIESELTECH's payment.
- (d) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

23 PRECEDENCE

- (a) Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document or schedule, (including any continuation sheets), as applicable, including any special provisions; (ii) This Dieseltech Ts & Cs; and (iii) Statement of Work.

24 PRIORITY RATING

- (a) If so identified, this Contract is a "rated order" certified for national defense use. It is imperative and understood that the Seller SHALL follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

25 PROHIBITED SOFTWARE

- (a) This clause only applies to Work that includes the delivery of software.
- (b) As used herein, "Prohibited License" means the General Public License ("GPL ") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Netscape Public License, or variations thereof, including without limitation licenses referred to as "GPL- Compatible, Free Software License."
- (c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates DIESELTECH to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (d) Unless Seller has obtained DIESELTECH's prior written consent, which DIESELTECH may withhold in its sole discretion, Seller shall not use in connection with this Contract, or deliver to DIESELTECH, any Prohibited Software.
- (e) Seller agrees to defend, indemnify, and hold harmless DIESELTECH, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Contract or the delivery of Prohibited Software.

26 QUALITY CONTROL SYSTEM

- (a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in the case of Government prime subcontracts the Seller shall comply with the higher-level quality standard titled Quality systems – Model for quality assurance in production, installation and servicing. American National Standards Institute/American Society for Quality Control (ANSI/ASQC) Q9001, (International Organization for Standardization (ISO) 9001) in effect on the date of this contract or in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by Seller shall be kept complete and available to DIESELTECH and its customers for a period of not less than seven (7) years.

27 RELEASE OF INFORMATION

- (a) Except as required by law, no public release of any information, or conformation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of DIESELTECH.

28 SEVERABILITY

- (a) Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions of this Contract will remain in full force and effect.

29 STOP WORK

- (a) Seller shall stop Work for up to ninety (90) days in accordance with any written notice received from DIESELTECH, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, DIESELTECH shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

30 SURVIVABILITY

- (a) If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:

- Applicable Laws
- Electronic Contracting
- Export Control
- Independent Contractor Relationship Information of DIESELTECH
- Insurance/Entry on DIESELTECH Property
- Intellectual Property
- Prohibited Software
- Release of Information
- Warranty

31 TERMINATION FOR CONVENIENCE

- (a) For specially performed Work:
 - (i) DIESELTECH may terminate part or this entire Contract for its convenience by giving written notice to Seller.
 - (ii) Upon termination, in accordance with DIESELTECH written direction, Seller will immediately: (i) Cease work; (ii) Prepare and submit to DIESELTECH an itemization of all completed and partially completed deliverables and services; (iii) Deliver to DIESELTECH deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant Statement of Work; and (iv) Deliver upon request any Work in process. In the event DIESELTECH terminates for its convenience after performance has commenced, DIESELTECH will compensate Seller for the actual, allowable, and reasonable expenses incurred by Seller for Work in process up to and including the date of Termination provided Seller uses reasonable efforts to mitigate DIESELTECH's liability under this clause.
 - (iii) In no event shall DIESELTECH be liable for lost or anticipated profits, unabsorbed indirect costs or overhead or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

- (b) For other than specially performed Work: DIESELTECH may terminate part or all of this Contract for its convenience by giving written notice to Seller and DIESELTECH's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.
- (c) In either case, Seller shall continue all Work not terminated.

32 TIMELY PERFORMANCE

- (a) Seller's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by DIESELTECH, DIESELTECH may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify DIESELTECH, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by DIESELTECH.

33 WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by DIESELTECH to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of DIESELTECH thereafter to enforce each such provision.
- (b) DIESELTECH's approval of documents shall not relieve Seller of its obligation to comply with the requirements of this Contract.
- (c) The rights and remedies of DIESELTECH in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

34 WARRANTY

- (a) Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, Seller, at DIESELTECH's option, shall promptly repair, replace, or reperform the non-conforming Work. Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at Seller's expense. If repair, or replacement, or re-performance of Work is not timely, DIESELTECH may elect to return, re-perform, or repair, replace, or re-procure the Work at Seller's expense. All warranties shall run to DIESELTECH and its customers.

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

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- 1 "Commercial Item" means a commercial item as defined in FAR 2.101
- 2 "Contract" means this contract.
- 3 "Contracting Officer" shall mean the U.S. Government Contracting Officer for DIESELTECH's government prime contract under which this Contract is entered.
- 4 "Contractor" and "Offeror" means the Seller, as defined in this Dieseltech Ts & Cs, acting as the immediate (first tier) subcontractor to DIESELTECH.
- 5 "Prime Contract" means the contract between DIESELTECH and the U.S. Government or between DIESELTECH and its higher-tier contractor who has a contract with the U.S. Government.
- 6 "Subcontract" means any contract placed by the contractor or lower-tier subcontractors under this Contract.

C. NOTES

- 1 Substitute "DIESELTECH" for "Government" or "United States" throughout this clause.
- 2 Substitute "DIESELTECH Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause
- 3 Insert "and DIESELTECH" after "Government" throughout this clause.
- 4 Insert "or DIESELTECH" after "Government" throughout this clause.
- 5 Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through DIESELTECH.
- 6 Insert "and DIESELTECH" after "Contracting Officer", throughout the clause.
- 7 Insert "or DIESELTECH PROCUREMENT REPRESENTATIVE" after "Contracting Officer", throughout the clause.

D. AMENDMENTS REQUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of DIESELTECH it will negotiate in good faith with DIESELTECH relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as DIESELTECH may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If DIESELTECH furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that DIESELTECH, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor's use of such Furnished Items in support of other U. S. Government prime contracts.

F. FAR FLOWDOWN CLAUSES

- 1 The following FAR clauses apply to this Contract
 - (a) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
 - (b) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA -MODIFICATIONS (OCT 1997) (Note 2 applies.)

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- (c) 52..219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
 - (d) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
 - (e) 52..222-26 EQUAL OPPORTUNITY (APR 2002) (Only paragraphs (b) (I)-(II) applies.)
 - (f) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 2003)
 - (g) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2004)
 - (h) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (APR 2003)
- 2 The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:
- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)
- 3 The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:
- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERNS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)
- 4 The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:
- (a) 52.219-9 RESERVED – Not Applicable - DIESELTECH is a small business concern – This clause will be modified if it becomes a large business under appropriate NAICS codes
- 5 The following FAR clauses apply to this Contract as indicated:
- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information.)
 - (b) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
 - (c) 52.225 BUY AMERICAN ACT-SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)
 - (d) 52.225-5 TRADE AGREEMENTS (OCT 2004) (Applicable if the Work contains other than U.S. made, designated country, Caribbean or NAFTA country end products.)
 - (e) 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987) (Applicable only if existing computer software is to be delivered under this Contract.)
 - (f) 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (MAY 2004)

(Applicable if Government property is furnished in the performance of this Contract. Except for paragraphs (i) and (ii), Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. Note 2 applies. The following is added as paragraph (m) "Seller shall provide to DIESELTECH immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of property control system." Disposition of property under paragraphs (i) and (ii) shall be coordinated with DIESELTECH.)

G. CERTIFICATIONS AND REPRESENTATIONS

This clause contains certifications and representations that are material representations of fact upon which DIESELTECH will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of DIESELTECH, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by DIESELTECH. Contractor shall immediately notify DIESELTECH of any change of status with regard to these certifications and representations.

- (a) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
- (1) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
 - (2) Contractor shall provide immediate written notice to DIESELTECH if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - (3) FAR 52.222-22 Previous Contracts and Compliance Reports. Contractor represents that if Contractor has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26): (i) Contractor has filed all required compliance reports, and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
 - (4) FAR 52.222-25 Affirmative Action Compliance. Contractor represents: (i) that Contractor has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (ii) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.