



# Standard Terms of Sale

ESM Aerospace, Inc.

1203 West Isabel Street  
Burbank, CA. 91506  
(818) 841-3653

[www.esmaerospace.com](http://www.esmaerospace.com)

## 1. APPLICABILITY

Unless and to the extent that a separately negotiated contract executed between the parties is cited on the procuring party's purchase order, the following conditions of sale apply to any purchase order covering any products, systems or products offered for sale ("Part(s)") by ESM Aerospace, Inc., its affiliates and subsidiaries ("Seller") to the procuring party ("Buyer").

## 2. PURCHASE ORDERS

(a) Buyer is not obligated to buy any products from Seller, and, Seller is not obligated to sell any products to Buyer. If Buyer orders products from Seller, and Seller delivers products to Buyer, these conditions of sale will apply to all such purchase and sales transactions.

(b) Any purchase order covering the sale of products will be governed solely by these conditions of sale and any other mutually agreed upon written provisions. Verbal understandings are expressly excluded.

(c) Seller's acceptance of Buyer's purchase order is made expressly conditional on Buyer's assent to these conditions of sale and the terms contained in any Seller purchase order acknowledgment. Seller's automated order acknowledgments, if any, do not constitute Seller's acceptance. Seller does not waive any term in these conditions of sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's purchase order, except as provided below, and Seller expressly rejects such provisions.

(d) Buyer's silence, acceptance, or use of products constitutes its assent to these conditions of sale.

(e) Any additional or different terms, which may be contained in any documents furnished by Buyer, are deemed material and Seller hereby objects to and rejects them. Any such additional or different terms are effective only if in writing and signed by an authorized representative of Seller.

(f) Buyer's purchase orders must include and may only serve to specify

(i) Seller's part number or applicable specifications referenced in Seller's quotation;

(ii) requested delivery dates;

(iii) price;

(iv) quantity;

(v) location to which the order is to be shipped;

(vi) location to which invoices should be sent for payment;

(vii) Buyer's purchase order number and Seller's quotation number, if applicable;

(viii) Buyer's carrier and mode of transportation plus any special routing, packing, labeling, handling or insurance requested by Buyer, if applicable; and

(ix) the end-use and end-user, if known, of the Part ordered and whether the Part will be used for military or quasi-military purposes.

(g) Buyer acknowledges that Seller makes no representation about the components, composition or sufficiency of products to meet Buyer's needs.

## 3. PRICES

(a) Unless Seller's quote states otherwise, prices are quoted in United States currency and are valid for products delivered within 90 days of quotation. Prices do not include any of Seller's non-standard costs, including but not limited to, testing, Buyer-specific certification or inspection requirements, etc., unless specifically stated on Seller's quotation. Seller reserves the right to change or withdraw quoted prices until Seller has accepted Buyer's purchase order.

(b) Buyer's order is subject to Seller's minimum order requirements. Seller reserves the right to limit order quantities for certain products.

(c) Prices do not include any taxes or duties on the purchase or sale of products, including, but not limited to, federal, state, or municipal excise, sales, use or value added taxes or import duties, if any. Any such taxes and duties that may become due and owing will be paid by Buyer, excluding taxes based upon Seller's gross income. Buyer shall reimburse Seller upon demand for any such taxes, duties or similar charges that Seller is required to pay or collect.



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## 4. PAYMENT

(a) Provided Seller's credit and collections department has granted credit terms to Buyer, Buyer will pay Seller's invoices within 30 days of their date. Buyer's payment(s) must be made in United States currency and must be accompanied by remittance detail containing at a minimum Seller's invoice number and amount paid per invoice. Seller reserves the right to correct any inaccurate invoices. Payments, without deduction for electronic funds transfer fees, must be in accordance with the "Remit To" field on each invoice.

(b) Seller may establish credit terms with Buyer through application to Seller's credit and collections department. If applicable, Seller may re-evaluate Buyer's credit terms at all times. If Seller determines in its sole discretion that Buyer fails to qualify for credit terms at any time, then Seller may, without notice to Buyer, modify or withdraw credit terms including, but not limited to, requiring advance payment, letters of credit, guarantees, or other security.

(c) If Buyer is delinquent in its payment obligations to Seller, Seller may at its option

- (i) be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, spares support and delivery lead-times;
- (ii) refuse to process any credit to which Buyer may be entitled;
- (iii) set off any credit or sum owed by Seller to Buyer against any undisputed amount owed by Buyer to Seller;
- (iv) withhold future deliveries to Buyer;
- (v) declare Buyer's performance in breach and terminate the purchase order;
- (vi) repossess products for which payment has not been made;
- (vii) make future deliveries on a cash-with-order or cash-in-advance basis;
- (viii) charge interest on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof;
- (ix) charge storage or inventory carrying fees on products;
- (x) recover all costs of collection including, without limitation, reasonable attorneys' fees;
- (xi) if Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or
- (xii) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available at law or in equity.

(d) If Buyer disputes Seller's invoice, or any portion thereof, Buyer will so notify Seller within ten (10) working days of the date of Seller's invoice. Buyer's failure to provide notification within said period shall be deemed acceptance of Seller's invoice by Buyer. The parties will use all reasonable efforts to resolve invoice disputes expeditiously. Notwithstanding any invoice disputes, Buyer shall promptly remit payment for invoices, or portions thereof, not in dispute.

## 5. DELIVERY

Seller will prepare and package products in accordance with its normal commercial practices. Delivery of products shall be FCA (Incoterms 2010) Seller's facility. Seller shall ship products by the mode and carrier designated by Buyer in accordance with the shipping instructions provided in the applicable purchase order. Where Buyer provides no instructions for the method of shipment, the method of shipment will be at Seller's discretion. Seller will schedule delivery in accordance with its standard lead time unless Seller agrees in writing to a separate delivery date. Seller reserves the right to make partial shipments against total purchase order requirements and deliver in advance of the scheduled delivery date whenever possible. Buyer's acceptance of late deliveries shall constitute a bar to a claim of late delivery. All shipping expenses from the FCA point to Buyer, including transportation and insurance costs, shall be for the account of Buyer. If Seller prepays such transportation charges, Buyer will reimburse Seller upon receipt of an invoice for those charges. Title and risk of loss will pass to Buyer when Seller places products at the disposal of Buyer at Seller's facility. Seller is entitled to quote additional charges for any rush shipments, special routing, packing, labeling, handling or insurance requested by Buyer.



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## **6. CERTIFICATION/DOCUMENTATION**

Seller will deliver products accompanied by applicable certificates of conformity, and such products will meet all applicable Government regulations and Purchase Order requirements in effect at that time.

## **7. ACCEPTANCE OF ORDER**

Buyer will inspect products within a reasonable period, not to exceed 10 calendar days, after Buyer receives products. Products will be deemed accepted unless Seller receives written notice of rejection explaining the basis for rejection within such period. Once accepted, Buyer's only recourse or remedy for non-conforming or defective products shall be as provided in the warranty section of these conditions of sale. Seller's delivery of quantities within five percent ( $\pm 5\%$ ) of Buyer's requested quantities of products shall be deemed completed orders. For delivery shortages, Buyer may, without further recourse, direct Seller to fulfill any products shortfall. Buyer shall return or purchase, at its option, products delivered in excess of Buyer's order. At Seller's option, for rejected products Seller will (i) replace or (ii) credit Buyer with the purchase price. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to products in transit, except that Seller will reimburse Buyer for normal and reasonable surface shipping costs incurred to return properly rejected products to Seller's designated facility. If Seller reasonably determines that rejection was improper, Buyer will pay all expenses relating to the improper rejection. Buyer will comply with Seller's return material authorization policies and will ship returned products to Seller suitably packed for shipment to prevent damage in transit in accordance with reasonable shipping practices.

## **8. TERMINATION/ORDER CANCELLATION/CHANGES**

(a) Buyer may cancel a purchase order, in whole or in part, only in the event of a default by Seller that has not been corrected within ninety (90) days following Seller's receipt of Buyer's written notice stating the nature of Seller's default and the corrective action requested.

(b) Any other changes to a purchase order, including but not limited to, specification, price, delivery time, or interchangeability of any Part can only be made by a change order signed by the authorized representatives of Buyer and Seller. Such change order shall include

- (i) the reason for the change;
- (ii) a description of the change;
- (iii) the effect on the specification, price, delivery time and/or interchangeability of the Part; and
- (iv) the effective date of the change.

Seller will review all Part specification changes requested by Buyer and will promptly advise Buyer whether such a change is technically feasible and, if so, the effect on unit price and delivery schedule.

## **9. TOOLING AND DATA**

Seller owns all rights to all specifications, drawings, engineering instructions, data, material, equipment (e.g., scanners), software, processes, facilities and tooling, including, but not limited, to jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, manufacturing aids and replacement items, now existing or hereafter created, except to the extent that title is specifically transferred in writing from Seller to Buyer or originally supplied from Buyer to Seller.



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### **10. NONDISCLOSURE**

These conditions of sale do not supersede any confidentiality agreement executed by Buyer and Seller that otherwise applies to products, services, technical data or other information delivered in connection with any purchase order. In the absence of such confidentiality agreement, Buyer may use Seller's proprietary and/or confidential information ("Proprietary Information") only in relation to the use of Seller's products by Buyer or for purposes directly relating to these conditions of sale. For purposes of these conditions of sale, "Proprietary Information" shall mean any business records, technical information or data of any kind including, but not limited to, all financial information, costs, quotations, price lists, designs, specifications, or drawings, that have been disclosed by Seller, or any other information expressly marked as "Confidential" or "Proprietary" by Seller or any of its suppliers. Proprietary Information shall remain the property of Seller and its suppliers. Buyer may only disclose Proprietary Information to its employees on a need-to-know basis, will protect against its inadvertent disclosure, and will not disclose Proprietary Information to any third party without Seller's prior written consent.

### **11. WARRANTY**

(a) "Nonconformance" means (i) failure of a Part to comply with the purchase Order requirements and/or the product is having defects in workmanship or material.

(b) Seller warrants to Buyer that products will be free from any Nonconformance at the time of delivery.

Buyer must notify Seller of any Nonconformance in writing and within thirty (30) calendar days of delivery of any products suffering from Nonconformance.

(c) Seller's only obligation and Buyer's sole remedy under this warranty is, at Seller's option to (i) refund the purchase price of, or (ii) replace, the Part that is suffering from a Nonconformance. Seller will pay reasonable transportation costs for warranty returns in an amount not to exceed normal ground shipping charges. Buyer must disposition warranty return products in accordance with Seller's written instructions.

(d) Following delivery to Buyer, Seller is not liable under this warranty for any Nonconformance resulting from a Part having been exposed or subjected to (i) any alteration, modification, maintenance, repair, installation, handling, transportation, storage, operation or use, that is improper or (ii) any accident, contamination, abuse, neglect, or negligence.

(e) THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR USE EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO EXTENSION OF THESE WARRANTIES WILL BE BINDING UPON SELLER UNLESS SET FORTH IN WRITING AND SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE.



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## **12. PATENT INDEMNIFICATION**

Seller has no control over the technology of the products sold herein, and therefore cannot and does not indemnify Buyer for claims by third parties that products infringe any patent, copyright, trademark or trade secret. Seller's sole obligation, and Buyer's only remedy, relating to patent, copyright, trademark or trade secret indemnification is, upon Buyer request, to assign or transfer to Buyer all patent, copyright, trademark or trade secret indemnifications of Seller's suppliers and/or manufacturers of products to the extent such indemnities are assignable. THE INDEMNITY, OBLIGATIONS AND LIABILITIES OF SELLER AND THE REMEDIES OF BUYER PROVIDED IN THIS SECTION ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES AND RENOUNCES, ALL OTHER INDEMNITIES, WARRANTIES (EXPRESSED, IMPLIED OR STATUTORY), OBLIGATIONS AND LIABILITIES OF SELLER AND RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST SELLER WITH RESPECT TO ANY INFRINGEMENT.

## **13. AFTERMARKET ACTIVITY**

Seller's sale of products to Buyer does not convey to Buyer any right or license to any present or future patent, trademark, copyright, trade secret or other intellectual property owned, controlled, or licensed by Seller ("Intellectual Property") nor any right to use Seller's Proprietary Information which is incorporated or embodied in products other than as set forth in these conditions of sale. If Buyer engages a third party to manufacture, repair and/or sell any products which incorporate or embody Seller's Intellectual Property and/or Proprietary Information or seeks for itself regulatory approval or certification of any products from any United States or other government agency or authority, such act will constitute (i) an infringement of Seller's Intellectual Property, or (ii) an unauthorized use of Seller's Proprietary Information, and injunctive relief shall be the specific remedy therefore, in addition to all other remedies available at law or equity.

## **14. INDEMNITY**

Buyer shall defend, indemnify and hold harmless Seller, its affiliates and subsidiaries and their directors, officers, employees and agents from and against any and all claims, suits, damage, loss, liability, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) resulting from, arising out of, or relating to, directly or indirectly, these conditions of sale or Buyer's activities or contractual relationships with third parties with respect to these conditions of sale or the installation, operation, use, maintenance, repair or modification of products, other than such claims as arise from the gross negligence or willful misconduct of Seller.

## **15. EXCUSABLE DELAYS**

Seller will not be liable to Buyer for any failure to meet its obligations due to any cause beyond Seller's reasonable control and not occasioned by its fault or negligence (an "Excusable Delay"). Excusable Delay events may include but are not limited to (i) delays or refusals to grant an export license or the suspension or revocation thereof; (ii) any other acts of any government that would limit the ability for contract performance; (iii) fires, earthquakes, floods, severe weather conditions, or any other acts of God; (iv) quarantines or regional medical crisis; (v) labor strikes or lockouts; (vi) riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property); and (vii) shortages or inability to obtain materials or components. If an Excusable Delay event causes a Seller delay, then the date of Seller's performance will be extended by the period of such delay or Seller may cancel Buyer's order with respect to such delayed products.

## **16. CONFIDENTIALITY**

Buyer shall not disclose to any third party the existence of, or any information concerning, the transaction contemplated hereby, nor any pricing of products offered hereunder, without first obtaining the written consent of Seller, unless required by law.



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## **17. ASSIGNMENT**

Buyer will not assign any rights nor delegate any obligations under these conditions of sale or any portion thereof in whole or in part, by operation of law or otherwise, without Seller's advance, written consent which will not be unreasonably withheld. Any attempt to assign or delegate in violation of this section will be void.

## **18. NOTICES**

Notices or non-routine communications between the parties, other than purchase orders, will be in writing, sent by prepaid overnight courier service and shall be effective upon receipt by the party to which notice is given. Notices shall be addressed to the following respective addresses of the parties, or such other addresses as the parties may designate by notice from time to time:

*If to Seller:* The address indicated on Seller's quotation or the applicable Seller facility to which the purchase order was sent.

*If to Buyer:* To Buyer's address on its purchase order.

## **19. WAIVER**

The failure or delay of Seller to enforce any of the provisions of these conditions of sale shall not be construed to be a continuing waiver of any provisions hereunder nor shall any such failure prejudice the right of Seller to take any action in the future to enforce any provisions hereunder.

## **20. EXPORT COMPLIANCE**

(a) Buyer represents and warrants that it will comply with all import and export control laws and regulations, including the United States Export Administration Regulation ("EAR") and the United States International Traffic in Arms Regulations ("ITAR"), and will retain documentation evidencing such compliance. Buyer will obtain import and re-export approvals and licenses required for products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations. Buyer agrees to indemnify and hold Seller harmless from any fines, penalties, or other liability imposed by any government agency arising from any failure of Buyer to comply with such laws and regulations.

(b) Seller will deliver products cleared for export, but Seller will not be liable to Buyer for any failure to provide products, services, transfers or technical data as a result of government actions that impact Seller's ability to perform, including, but not limited to

- (i) any governmental failure to provide, or the cancellation of, export or re-export licenses;
- (ii) any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Seller's performance;
- or
- (iii) delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations or to assist Seller in acquiring same. Buyer shall not be relieved of its payment obligations if any of the above events occur.

(c) If Buyer designates the freight forwarder for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. Seller will provide Buyer's designated freight forwarder with required commodity information.

(d) Where Buyer holds the design authority for a Part, Buyer shall provide Seller with export classification data, such as Export Control Classification Number ("ECCN"), Harmonized Tariff Schedule ("HTS") code or International Traffic in Arms Regulations ("ITAR") classification, as applicable. Buyer shall provide updates to Seller in a timely manner as changes occur.



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## **21. GOVERNING LAW, VENUE AND JURISDICTION**

These conditions of sale and the transactions arising out of or related to Buyer's purchase order, including tort claims, will be governed by the laws of the State of Florida, without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, shall not apply. Venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce any provisions of these conditions of sale shall lie within the courts of the State of California-Los Angeles County, or the United States District Court for the Southern District of California. In no event shall Buyer commence any action arising out of the purchase order or the contract between the parties later than one year after the cause of action has accrued. If Buyer is organized outside the United States, to the extent that Buyer or any of its property is or becomes entitled at any time to any immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceeding, or other legal process in any jurisdiction, Buyer for itself and its property does hereby irrevocably and unconditionally waive, and agrees not to assert, plead or claim, any such immunity with respect to its obligations, liabilities or any other matters resulting from or arising under or in connection with these conditions of sale and the transactions arising out of Buyer's purchase order.

## **22. LIMITATION OF LIABILITY**

NOT WITHSTANDING ANYTHING IN THESE CONDITIONS OF SALE TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR USE EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THESE CONDITIONS OF SALE AND THE TRANSACTIONS ARISING OUT OF BUYER'S PURCHASE ORDER IS LIMITED TO THE CONTRACT PRICE FOR THE SPECIFIC PART OR SERVICE THAT GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE. THESE EXCLUSIONS OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THESE CONDITIONS OF SALE.

## **23. SETOFF**

Buyer will not set off any amount, whether or not liquidated, against sums Buyer asserts are due to Buyer, Buyer's parent, subsidiaries, affiliates or other divisions or units under any transaction with Seller, Seller's parent, subsidiaries, affiliates or other divisions or units, whether under these conditions of sale or otherwise.

## **24. SURVIVAL**

All provisions of these conditions of sale which by their nature should apply beyond completion of Buyer's order will remain in force after the expiration or any termination of these conditions of sale.

## **25. SEVERABILITY**

If any provisions of these conditions of sale are at any time held to be invalid or unenforceable, such provisions shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of the provisions which shall remain in full force and effect and, in lieu of the invalid or unenforceable provisions, there will be added as part of these conditions of sale one or more provisions as similar in terms as may be valid and enforceable under applicable law.



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## **26. THIRD PARTY BENEFICIARIES**

Except as expressly provided to the contrary in these conditions of sale, the provisions of these conditions of sale are for the benefit of the parties hereto and not for the benefit of any third party.

## **27. INDEPENDENT CONTRACTOR**

The parties acknowledge that they are independent contractors and no other relationship, including without limitation partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by these conditions of sale. Neither party has the right to bind or obligate the other.

## **28. HEADINGS**

Headings and captions are for the convenience of reference only and do not alter the meaning or interpretation of these conditions of sale.

## **29. COMMERCIAL USE**

Buyer represents and warrants that no purchases of products hereunder will be used in the performance of a contract or subcontract with any government in a manner to affect Seller's rights to data, technology, software or other intellectual property supplied by Seller.

## **30. APPLICATION OF FAR/DFARS CLAUSES FOR THE SALE OF COMMERCIAL ITEMS**

If a U.S. Government contract is referenced on the face of Buyer's purchase order only the procurement regulations applicable to the acquisition of "Commercial Items," apply, as that term is defined in 48 C.F.R. ("FAR") 2.101. In addition, they do so with the same force and effect as if set forth verbatim herein. As prescribed in FAR 44.403/52.244-6 and Defense Federal Acquisition Regulation Supplement ("DFARS") 244.403/252.244-7000 (Subcontracts for Commercial Items and Commercial Components (DoD Contracts)), with respect to the procurement of Commercial Items, the following federal procurement regulations (in effect on the date of Buyer's purchase order) are incorporated into these conditions of sale by reference, as applicable:

- 52.203-13, Contractor Code of Business Ethics and Conduct
- 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.219-8, Utilization of Small Business Concerns
- 52.222-26, Equal Employment Opportunity
- 52.222-35, Equal Employment Opportunity for Veterans
- 52.222-36, Affirmative Action for Workers With Disabilities
- 52.222-50, Combating Trafficking in Persons
- 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels
- 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals
- 252.236-7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers
- 252.246-7023, Transportation of Supplies by Sea
- 252.247-7024, Notification of Transportation of Supplies by Sea