

## APPENDIX 'N'

### PROGRESS PAYMENTS FOR SMALL BUSINESS CONCERNS

Progress payments shall be made to the Seller when requested as work progresses, but not more frequently than monthly in amounts approved by Buyer, under the following conditions:

1. Computation Amounts.

- a. Unless the Seller requests a smaller amount, each progress payment shall be computed as (i) \*% of the Seller's cumulative total costs under this Purchase Order as shown records maintained by the Seller for the purpose of obtaining payment by Buyer plus (ii) progress payments to subcontractors (see paragraph 10. below), all less the sum of all previous progress payments made by the Buyer under this Purchase Order. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.
- b. Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless--
  - (1) The Seller's practice is to make contributions to the retirement fund quarterly or more frequently; and
  - (2) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from Seller's total costs for progress payments until paid).
- c. The Seller shall not include the following in total costs for progress payment purposes in subparagraph 1.a.(i) above:
  - (1) Costs that are not reasonable, allocable to this Purchase order, and consistent with sound and generally accepted accounting principles and practices.
  - (2) Costs incurred by subcontractors or suppliers.
  - (3) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
  - (4) Payments made or amounts payable to subcontractors or suppliers, except for--

- (a) Completed work including partial deliveries, to which the Seller has acquired title; and
  - (b) Work under cost-reimbursement or time-and-material subcontracts to which the Seller has acquired title.
- d. The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this Purchase Order for which delivery and invoicing by the Seller and acceptance by the Buyer are incomplete.
- e. The total amount of progress payments shall not exceed \*% of the total Purchase Order price.
- f. If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs 1.d. or 1.e. above, the Seller shall repay the amount of such excess to the Buyer upon demand.
2. Liquidation. Except as provided in the Termination for Convenience clause, all progress payments shall be liquidated by deducting from any payment under this Purchase Order, other than advance or progress payments, the unliquidated progress payments, or \*% of the amount invoiced, whichever is less. Seller shall repay to the Buyer any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Buyer reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper Purchase Order financing.
3. Reduction or Suspension. The Buyer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
- a. Seller failed to comply with any material requirement of this Purchase Order which includes paragraphs 6. and 7. below.
  - b. Performance of this Purchase Order is endangered by the Seller's (i) failure to make progress or (ii) unsatisfactory financial condition.
  - c. Inventory allocated to this Purchase Order substantially exceeds reasonable requirements.
  - d. The Seller is delinquent in payment of the costs of performing this Purchase Order in the ordinary course of business.

e. The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this Purchase Order.

f. The Seller is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph 2. above, and that rate is less than the progress payment rate stated in subparagraph 1.a. above.

4. Title.

a. Title to the property described in this paragraph 4. shall vest in the Government. Vestiture shall be immediately upon the date of this Purchase Order, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Purchase Order.

b. "Property," as used in this clause, includes all of the below-described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this Purchase Order under sound and generally accepted accounting principles and practices.

- (1) Parts, materials, inventories, and work in process;
- (2) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this Purchase Order;
- (3) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (2) above; and
- (4) Drawings and technical data, to the extent the Seller or Seller's subcontractors are required to deliver them to the Buyer by other clauses of this Purchase Order.

c. Although title to property is in the Government under this clause, other applicable clauses of the Purchase Order, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

d. The Seller may sell any scrap resulting from production under this Purchase Order without requesting the Buyer's approval, but the proceeds shall be credited against the costs of performance.

e. To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Seller must obtain the Buyer's advance approval of the action and the terms. The Seller shall (i) exclude the allocable costs of the property from the costs of Purchase Order performance, and (ii)

repay to the Buyer any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

- f. When the Seller completes all of the obligations under this Purchase Order, including liquidation of all progress payments, title shall vest in the Seller for all property (or the proceeds thereof) not--
    - (1) Delivered to, and accepted by, Buyer or the Government under this Purchase Order; or
    - (2) Incorporated in supplies delivered to, and accepted by, the Buyer or the Government under this Purchase Order and to which title is vested in the Government under this clause.
  - g. The terms of this Purchase Order concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
5. Risk of Loss. Before delivery to and acceptance by the Government, the Seller shall bear the risk of loss for property, the title to which vests in the Government under this clause except to the extent the Government expressly assumes the risk. The Seller shall repay the Buyer an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen or destroyed.
  6. Control of Costs and Property. The Seller shall maintain an accounting system and controls adequate for the proper administration of this clause.
  7. Reports and Access to Records. The Seller shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer or the Buyer for administration of this clause. Also the Seller shall give the Buyer or the Government reasonable opportunity to examine and verify Seller's books, records and accounts.
  8. Special Terms Regarding Default. If this Purchase Order is terminated under the Default clause, (i) the Seller shall, on demand, repay to the Buyer the amount of unliquidated progress payments and (ii) title shall vest in the Seller, on full liquidation of progress payments, for all property for which the Buyer elects not to require delivery under the Default clause. The Buyer shall be liable for no payment except as provided by the Default clause.
  9. Reservations of Rights.
    - a. No payment or vesting of title under this clause shall (i) excuse the Seller from performance of obligations under this Purchase Order or (ii)

constitute a waiver of any of the rights or remedies of the parties under the Purchase Order.

- b. The Buyer's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this Purchase Order and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Buyer.
- 10. Progress Payments to Subcontractors. The amounts mentioned in item 1.a.(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:
  - a. The amounts included are limited to (i) the unliquidated remainder of progress payments made, plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Seller has approved for current payment in the ordinary course of business.
  - b. The Subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.
  - c. The terms of the subcontract or interdivisional order concerning progress payments--
    - (1) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, of the Federal Acquisition Regulation, for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern.
    - (2) Are at least as favorable to the Buyer and the Government as the terms of this clause;
    - (3) Are not more favorable to the subcontractor or division than the terms of this clause are to the Seller;
    - (4) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and
    - (5) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (i) the Seller defaults or (ii) the subcontractor becomes bankrupt or insolvent.
  - d. The progress payment rate in the subcontract is the customary rate, depending on whether the subcontractor is or is not a small business concern.

- e. The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Buyer to the Seller under this Purchase Order.
  - f. If no unliquidated progress payments to the Seller remain, but there are unliquidated progress payments that the Seller has made to any subcontractor, the Seller shall be subrogated to all the rights the Buyer or the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had transferred to the Seller.
  - g. The Seller shall pay the subcontractor's progress payment request under subparagraph 10.a.(ii) above, within a reasonable time after receiving the Buyer progress payment covering those amounts.
  - h. To facilitate small business participation in subcontracting under this Purchase Order, the Seller agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Seller further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.
11. Limitations on Undefinitized Contract Actions. Notwithstanding any other progress payment provision in this Purchase Order , progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1 including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph 1. of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Seller progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph 2. of this clause, progress payments for undefinitized contract actions shall be liquidated at eighty percent (80%) of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized.

The amount of unliquidated progress payments for undefinitized contract actions shall not exceed eighty percent (80%) of the maximum liability of the Buyer under the undefinitized contract action or such lower limit specified elsewhere in the Purchase Order. Separate limits may be specified for separate actions.

The progress payment and liquidation rate applicable to this Purchase Order is \_\_\_\_\_%.