

General Terms and Conditions of Purchase

Supplement 1 – Federal Acquisition Regulation (FAR) Government Contract Provisions (revised May 20, 2015)

- A. When the materials or products furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to the JEOL General Terms and Conditions of Purchase, the following provisions shall apply. The effective version of each Federal Acquisition Regulation (hereinafter “FAR”) provision shall be the same version as that which appears in JEOL’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these FAR provisions and the General Terms and Conditions of Purchase, the FAR provisions shall control. For the acquisition of commercial items¹ under purchase orders placed in support of and charged to a U.S. Government prime contract or subcontract, the only FAR clauses that are required are those annotated with * .

- B. The following clauses set forth in the FAR in effect as of the date of JEOL’S prime contract or higher tier subcontract are incorporated herein by reference. In all clauses listed herein, the terms “Government”, “Contracting Officer” and “Contractor” shall be deemed revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. “Subcontractor”, however, shall mean “Seller’s Subcontractor” under the Purchase Order.

A. Applicable to all Purchase Orders:

1	Gratuities	52.203-3
2	Covenant Against Contingent Fees	52.203-5
3	Price or Fee Adjustment for Illegal or Improper Activity	52.203-10
4	Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009	52.203-15
5	Security Requirements	52.204-2
6	Personal Identity Verification of Contractor Personnel	52.204-9
7	Reporting Executive Compensation and First-Tier Subcontract Awards	52.204-10
8	Material Requirements	52.211-5
9	Defense Priority and Allocation Requirements	52.211-15
10	Contract Terms Required to Implement Executive Orders –Commercial Items	52.212-5
11	Utilization of Small Business Concerns	52.219-8*
12	Notice to Government of Labor Disputes	52.222-1
13	Service Contract Act of 1965, as amended	52.222-41*
14	Combating Trafficking in Persons	52.222-50*
15	Exemption From Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements	52.222-51*
16	Exemption From Application of the Service Contract Act to Contracts for Certain Services – Requirements	52.222-53*

¹ For the definition of a commercial item see FAR 2.101.

17	Hazardous Material Identification and Material Safety Data	52.223-3
18	Notice of Radioactive Materials (“Government means “Government and Buyer”)	52.223-7
19	Ozone-depleting Substances	52.223-11
20	Refrigeration Equipment and Air Conditioners	52.223-12
21	Contractor Policy to Ban Text Messaging While Driving	52.223-18
22	Privacy Act	52.224-1
23	Buy-America Act-Supplies	52.225-1
24	Duty-free Entry	52.225-8
25	Restrictions on Certain Foreign Purchases	52.225-13
26	Authorization and Consent – Alternate 1	52.227-1
27	Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
28	Patent Indemnity	52.227-3
29	Refund of Royalties	52.227-9
30	Filing of Patent Applications – Classified Subject Matter	52.227-10
31	Patent Rights- Ownership by the Contractor (Dec 2007 applicable if prime contract includes, at any tier, experimental, developmental or research Work and Subcontractor is a small business concern or domestic non-profit organization. Reports required by this clause shall be filed with the agency identified by the JEOL procurement representative identified on the face of this order.)	52.227-11
32	Rights in Data – General (Not applicable under Department of Defense procurements)	52.227-14
33	Commercial Computer Software License (Not applicable under Department of Defense procurements)	52.227-19
34	Worker’s Compensation Insurance (Defense Base Act)	52.228-
35	Workers Compensation (War Hazard Insurance Overseas)	52.228-4
36	Insurance – Work on a Government Installation	52.228-5
37	Industrial Resources Developed Under Defense Production Act Title III	52.234-1
38	Accident Prevention	52.236-13
39	Competition in Subcontracting	52.244-5
40	Subcontracts for Commercial Items	52.244-6
41	Government Property	52.245-1
42	Government Property Installation Operation Services	52.245-2
43	Use and Charges	52.245-9
44	Inspection of Supplies – Fixed Price	52.246-2
45	Inspection of Supplies – Cost Reimbursement	52.246-3
46	Inspection of Services – Fixed Price	52.246-4
47	Responsibility for Supplies	52.246-16
48	Preference for U.S. Flag Air Carriers	52.247-63
49	Preference for Privately Owned U.S. Flag Commercial Vessels	52.247-64*
50	Termination for Convenience of the Government (Fixed Price) “Government” shall mean “Buyer”	52.249-2

B. Orders > \$10,000 Shall Also Include the Following:

51	Prohibition of Segregated Facilities	52.222-21
52	Previous Contracts and Compliance Reports (except for Commercial Items)	52.222-22
53	Equal Opportunity	52.222-26*
54	Notification of Employee Rights Under the National Labor Relations Act	52.222-40*

C. Orders > \$15,000 Shall Also Include the Following:

55	Walsh-Healy Public Contracts Act	52.222-20
56	Affirmative Action for Workers with Disabilities	52.222-36*

D. Orders > \$100,000 Shall Also Include the Following:

57	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-35*
58	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era and other Eligible Veterans (except for Commercial Items)	52.222-37
59	Toxic Chemical Release Reporting (less paragraph (e))	52.223-14

E. Orders > \$150,000 Shall Also Include the Following:

60	Restrictions on Subcontractor Sales to the Government	52.203-6
61	Anti-Kickback Procedures (less paragraph (c) (1))	52.203-7
62	Limitation on Payments to Influence Certain Federal Transactions	52.203-12
63	Preventing Personal Conflicts of Interest	52.203-16
64	Audit and Records – Negotiation	52.215-2
65	Integrity of Unit Prices (less paragraph b)	52.215-14
66	Limitations on Pass-Through Charges	52.215-23
67	Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
68	Employment Eligibility Verification	52.222-54
69	Value Engineering	52.248-1

F. Orders > \$650,000

70	Small Business Contracting Plan	52.219-9
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G. Orders > \$700,000 and/or the Applicable Cost or Pricing Data Threshold:

71	Audit & Records – Sealed Bidding	52.214-26
72	Subcontractor Cost or Pricing Data- Modifications- Sealed Bidding	52.214-28
73	Pension Adjustments and Asset Reversions	52.215-15
74	Reversion or Adjustment of Plans for Post-Retirement Benefits Other Than Pensions	52.215-18
75	Notification of Ownership Changes	52.215-19

H. Unless Otherwise Exempt Also Include the Following:

76	Contractor Code of Business Ethics and Conduct	52.203-13
77	Display of Hotline Posters	52.203-14
78	Protecting Government Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	52.209-6
79	Price Reduction for Defective Certified Cost or Pricing Data	52.215-10
80	Price Reduction for Defective Certified Cost or Pricing Data- Modifications	52.215-11

81	Subcontractor Certified Cost or Pricing Data	52.215-12
82	Subcontractor Certified Cost or Pricing Data – Modifications	52.215-13
83	Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data	52.215-20
84	Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data - Modifications	52.215-21
85	Subcontracts – (Labor Standards)	52.222-11
86	Pre-award On-site Equal Opportunity Compliance Evaluation	52.222-24
87	Affirmative Action Compliance (Construction)	52.222-27
88	Buy American Act – Free Trade Agreements-Israeli Trade Act	52.225-3
89	Trade Agreements	52.225-5
90	Contractor Personnel in a Designated Operational Area	52.225-19
91	Patent Rights –Ownership by the Government	52.227-13
92	State of New Mexico Gross Receipts & Compensating Tax	52.229-10
93	Earned Value Management System	52.234-4
94	Change Order Accounting	52.243-6
95	Notification of Changes	52.243-7

I. Applicable to Cost Reimbursement, Time & Material or Labor Hour Purchase Orders:

96	Allowable Cost and Payment (cost reimbursement) Seller agrees to execute assignment documents in order to comply with subsection (h)	52.216-7
97	Fixed Fee- applicable to cost plus fixed fee Purchase Orders	52.216-8
98	Incentive Fee – applicable to cost plus incentive fee Purchase Orders	52.216-10
99	Cost Contract – No Fee – applicable to cost no fee Purchase Orders	52.216-11
100	Cost Sharing Contract – No Fee – applicable to cost sharing no fee Purchase Orders	52.216-12
101	Payment for Overtime Premiums – insert “0%” in paragraph (a)	52.222-2
102	Insurance – Liability to Third Persons	52.228-7
103	Payments under Time and Materials and Labor Hour Contracts, in which “schedule ”means this Purchase Order, “voucher(s)” means invoice(s), “Government “ means JEOL and “Contracting Officer” means Buyer’s Purchasing Representative.	52.232-7
104	Limitation of Cost (if fully funded)	52.232-20
105	Limitation of Funds (if incrementally funded)	52.232-22
106	Notice of Intent to Disallow Costs	52.242-1
107	Penalties for Unallowable Costs	52.242-3
108	Changes – Cost Reimbursement – applicable to such Purchase Orders	52.243-2
109	Changes – Time and Material or Labor Hours – applicable to such Purchase Orders	52.243-3
110	Subcontracts (paragraphs (h) and (i) only apply)	52.244-2
111	Inspection of supplies (Cost Reimbursement) – “Contracting Officer” means “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.	52.246-3
112	Inspection of Services (Cost Reimbursement) - “Contracting Officer” means “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.	52.246-5

113	Inspection of Time and Material and Labor Hour - “Contracting Officer” means “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.	52.246-6
114	Termination (Cost Reimbursement) – “Government” means “Buyer” and “Contracting Officer” means “Buyer’s Purchasing Representative”. Alternative IV is applicable to time and material or labor hour Purchase Orders only.	52.249-6 Alt IV
115	Excusable Delays	52.249-14

3. Certifications

The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore eligible for award.

116	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$150,000)	52.203-11
117	Certification Regarding Responsibility Matters (over \$150,000)	52.209-5
118	Certification of Toxic Chemical Release Reporting (over \$100,000)	52.223-13

C. Additional Clauses

a. Cost Accounting Standards (Applicable unless otherwise exempt)

119	Cost Accounting Standards	52.230-2
120	Disclosure and Consistency of Cost Accounting Standards	52.230-3
121	Administration of Cost Accounting Standards	52.230-6

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide JEOL with copies of all communications between Seller and the Contracting Officer respecting Cost Accounting Standards FAR 52.230-2 and Administration of Cost Accounting Standards FAR 52.230-6, provided Seller shall not be required to disclose to JEOL such communications containing information that is legally privileged and confidential to Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to defend, indemnify and hold JEOL harmless to the full extent of any loss, damage or expense if JEOL is subject to any claim of liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses.

b. Truth in Negotiations (Certified Cost or Pricing Data)

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of any appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing data.

1. Indemnification: ***If any cost or price (including profit or fee) negotiated in connection with the prime contract between the Government and JEOL or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by JEOL relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller***

shall indemnify Buyer in the amount of said reduction. The phrase “cost or pricing data” as used herein shall be deemed to include any such data related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of or in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate. If any reduction of the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay JEOL at the time such overpayment is repaid:

- a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date JEOL is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - b. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate or non-current.
2. **Cost or Pricing Data for Changes:** Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed threshold for submission of cost or pricing data, Seller shall submit cost or pricing data and shall certify that such data, as defined in Federal Acquisition Regulation 2.101, submitted either actually or by specific identification in writing, are accurate, complete and current as of the date of completion of negotiations. When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

c. Equal Employment Opportunity

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a):

41 C.F.R. § 60-1.4(a)—This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-1.4(a). This regulation prohibits discrimination against qualified individuals on the basis race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

41 C.F.R. § 60-300.5(a)—This contractor and subcontractor shall abide by the requirements of 41 CFR §60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

41 C.F.R. § 60-741.5(a)—This contractor and subcontractor shall abide by the requirements of 41 CFR § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

Revisions

April 1, 2014	Document released.
June 16, 2014	Added clause C.c. Equal Employment Opportunity with specific language as required by federal government contracting regulations.