

FAR/DFAR FLOW-DOWN PROVISIONS

- 1.1 In case of government contracts, the following FAR and DFAR clauses are incorporated into the Terms and Conditions of Purchase to the extent applicable, in accordance with the flow-down requirements specified in Buyer's higher tier contract.
- 1.2 Definitions.
- (a) "**Commercial Item**" means a commercial item as defined in FAR 2.101. 2. "Contract" means this Contract.
 - (b) "**Contracting Officer**" shall mean the U.S. Government Contracting Officer for Spartronics' government prime contract under which this Contract is entered.
 - (c) "**Contractor**" and "**Offeror**" means the Supplier, acting as the immediate subcontractor to Spartronics.
 - (d) "**DoD**" means the U.S. Department of Defense.
 - (e) "**DFAR**" means Defense Federal Acquisition Regulation.
 - (f) "**FAR**" means Federal Acquisition Regulation.
 - (g) "**Prime Contract**" means the contract between Spartronics and the U.S. Government or between Spartronics' customer who has a contract with the U.S. Government.
 - (h) "**Subcontract**" means any contract placed by the Contractor or lower-tier subcontractors under this Agreement.
- 1.3 The FAR and DFAR clauses 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 the Order.
- 1.4 FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
- (a) Contractor certifies, to the best of its knowledge and belief, that:
 - (i) Contractor and/or any of its Principals:
 - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision;
 - (D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
 - (I) Federal taxes are considered delinquent if both of the following criteria apply:
 - (aa) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(bb) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(II) Examples:

(aa) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(bb) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(cc) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(dd) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ee) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions). (ii) Contractor has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(b) Contractor shall provide immediate written notice to Spartronics if, at any time prior to contract award, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, Spartronics may terminate this contract for default.

1.5 If the Order contains any Commercial Items under all government contracts, the following FAR clauses will apply.

(a) FAR 52.203-7 “Anti-Kickback Procedures” (Excepting paragraph (c)(1)) (Applicable to Purchase Orders that exceed \$150,000 or the dollar threshold in effect as of the date of the prime contract.)

(b) FAR 52.203.12 “Limitation on Payments to Influence Certain Federal Transactions” (Applicable to Purchase Orders exceeding \$150,000 or the dollar threshold in effect as of the date of the prime contract.)

(c) FAR 52.203.13 “Contractor Code of Business Ethics and Conduct” (Applicable to Purchase Orders (i) that have a value more than \$5,000,000 or the dollar threshold in effect as of the date of the prime contract; and (ii) that have a performance period of more than 120 days.) (In Paragraph (b)(3)(i), the meaning of “agency office of the Inspector General” and “Contracting Officer” does not change, in Paragraph (b)(3)(ii) the meaning of “Government” does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of “OIG of the ordering agency”, “IG of the agency” “agency OIG” and “Contracting Officer” do not change.)

(d) FAR 52.203-17 “Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights” (Applicable to Purchase Orders over the simplified acquisition threshold under prime contracts awarded by civilian agencies other than NASA and the Coast Guard.) FAR 52.204-10 “Reporting Executive Compensation and First-Tier Subcontract Awards” (Applicable to Purchase Orders (i) of \$25,000 or more or (ii) the dollar threshold in effect as of the date of the prime contract and

when Buyer is the Prime Contractor.) (The usual substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.)

- (e) FAR 52.209-6 “Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment” (Applicable to Purchase Orders exceeding \$30,000 or the dollar threshold in effect as of the date of the prime contract.)
- (f) FAR 52.216-22 Alt I “Limitations on Pass-Through Charges — Identification of Subcontract Effort” (Applicable to solicitations for Purchase Orders that will incorporate FAR clause 52.215-23 or 52.215-23 Alt I.)
- (g) FAR 52.215-23 & Alt I “Limitations on Pass — Through Charges” (Include Alternate I if it is Included in the prime contract) (Under other than DoD prime contracts, applicable to time and material and labor hour Purchase Orders that exceed the simplified acquisition threshold; and under DoD prime contracts, applicable to time and material, labor hour, and fixed price Purchase Orders, except those identified in FAR 15.408(n)(2)(1)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.) FAR 52.219-8 “Utilization of Small Business Concerns”
- (h) FAR 52.222-17 “Nondisplacement of Qualified Workers” (Applicable to Purchase Orders over the simplified acquisition threshold when services are to be performed by Seller (1) under service contracts, as defined at 22.001, (2) that succeed purchase orders for performance of the same or similar work at the same location and (3) that are not exempted by 22.1203-2 or waived in accordance with 22.1203-3. Seller to furnish information needed by Buyer to comply with paragraphs d and e of this clause.)
- (i) FAR 52.222-21 “Prohibition of Segregated Facilities” (Applicable to Purchase Orders exceeding \$10,000 or the dollar threshold in effect as of the date of the prime contract.)
- (j) FAR 52.222-26 “Equal Opportunity” (Applicable to Purchase Orders exceeding \$10,000 or the dollar threshold in effect as of the date of the prime contract.) FAR 52.222-35 “Equal Opportunity for Veterans” (Applicable to Purchase Orders of \$100,000 or more, or the dollar threshold in effect as of the date of the prime contract.)
- (k) FAR 52.222-36 “Affirmative Action for Workers with Disabilities” (Applicable to Purchase Orders exceeding \$15,000 or the dollar threshold in effect as of the date of the prime contract.)
- (l) FAR 52.222-37 “Employment Reports on Veterans” (Applicable to Purchase Orders of \$100,000 or more, or the dollar threshold in effect as of the date of the prime contract.)
- (m) FAR 52.222-40 “Notification of Employee Rights Under the National Labor Relations Act” (Applicable to Purchase Orders that exceed \$10,000 or the dollar threshold in effect as of the date of the prime contract and are issued under prime contracts resulting from Solicitations issued after December 12, 2010.) FAR 52.222-41 “Service Contract Labor Standards” (Applicable to Purchase Orders that are subject to the Service Contract Labor Standards statute.) FAR 52.222-50 & Alt I “Combating Trafficking in Persons” (Alternate I is applicable to Purchase Orders if it is included in the prime contract.)
- (n) FAR 52.222-54 “Employment Eligibility Verification” (Applicable to Purchase Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,000 or the dollar threshold in effect as of the date of the prime contract; and (iii) includes work performed in the United States.)
- (o) FAR 52.222-55 “Minimum Wages Under Executive Order 13658” (Applicable to Purchase Orders regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)
- (p) FAR 52.225-26 “Contractors Performing Private Security Functions Outside the United States” (Applicable to Purchase Orders issued under (1) DoD contracts that that will be performed in areas of contingency operations, combat operations, as designated by the Secretary of Defense, or other significant military operations, as designated by the Secretary of Defense upon agreement of the Secretary of State or (ii) non-DoD contracts that will be performed in areas of Combat operations, as designated by the Secretary of Defense, or other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.)
- (q) FAR 52.232-39 “Unenforceability of Unauthorized Obligations”
- (r) FAR 52.232-40 “Providing Accelerated Payments to Small Business Subcontractors” (Applicable to Purchase Orders awarded after December 26, 2013 to small business when Buyer receives Accelerated Payments under its prime contract.)

- (s) FAR 52.244-6 “Subcontracts for Commercial Items”
- (t) FAR 52.247.64 “Preference for Privately Owned U.S.-Flag Commercial Vessels”

1.6 If the Order contains any Commercial Items under DoD contracts, the following DFAR clauses will apply.

- (a) DFAR 252.203-7002 “Requirement to Inform Employees of Whistleblower Rights”
- (b) DFAR 252.204-7012 “Safeguarding of Unclassified Controlled Technical Information” (Applicable to Purchase Orders under DoD contracts awarded after November 17, 2013 and before August 2015)
- (c) DFAR 252.204-7012 “Safeguarding Covered Defense Information and Cyber Incident Reporting” (Applicable to Purchase Orders under DoD contracts awarded after August 25, 2015 and before October 8, 2015.)
- (d) DFAR 252.204-7012 “Safeguarding Covered Defense Information and Cyber Incident Reporting” (DEVIATION 2016-00001) (Applicable to Purchase Orders under DoD contracts awarded after October 7, 2015.)
- (e) DFAR 252.204-7015 “Disclosure Of Information To Litigation Support Contractors”
- (f) DFAR 252-211-7003 “Item Identification and Valuation” (Seller’s obligations under this clause are limited to cooperating with Buyer’s efforts to comply with this clause, including granting Buyer access to Seller’s deliverables at its facilities and to appropriate property records.)
- (g) DFAR 252-223-7008 “Prohibition of Hexavalent Chromium” (Applicable to all Purchase Orders for supplies, maintenance and repair services, or construction materials.)
- (h) DFAR 252.256-7008 “Restriction on Acquisition of Specialty Metals” (Applicable to Purchase Orders for the delivery of specialty metals as end items to Buyer or Seller to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government when DFARS clause 252.225-7009 is in the prime contract.)
- (i) DFAR 252.225-7009 “Restriction on Acquisition of Certain Articles Containing Specialty Metals” (excluding paragraph (d) and paragraph (e)(1) which are deleted from this clause). (Applicable to Purchase Orders for items containing specialty metals to ensure compliance of the end products that Buyer will deliver to the Government under prime contracts awarded, or modified to include the clause, after July 28, 2009 according to the clause.)
- (j) DFAR 252.226-7010 “Commercial Derivative Military Article — Specialty Metals Compliance Certificate” (Applicable to solicitations for Purchase Orders that will incorporate DFARS clause 252.225-7009.)
- (k) DFAR 252.225-7048 “Export-Controlled Items”
- (l) DFAR 252.225-7052 “Restriction on the Acquisition of Certain Magnets and Tungsten” (Applicable to Purchase Orders for the delivery of goods that exceed the simplified acquisition threshold, unless an exception at paragraph © of the clause applies).
- (m) DFAR 252.204-7015 “Disclosure Of Information To Litigation Support Contractors”
- (n) DFAR 252-211-7003 “Item Identification and Valuation” (Seller’s obligations under this clause are limited to cooperating with Buyer’s efforts to comply with this clause, including granting Buyer access to Seller’s deliverables at its facilities and to appropriate property records.)
- (o) DFAR 252.227-7013 “Rights in Technical Data Noncommercial Items” (Applicable whenever any technical data for commercial items developed in part DFAR 252.203-7002 “Requirement to Inform Employees of Whistleblower Rights”

1.7 To the extent applicable, the following clauses shall also apply:

- (a) FAR 52.204-10 “Reporting Executive Compensation and First-Tier Subcontract Awards”
- (b) DFAR 252.227-7015 “Technical Data — Commercial Items”
- (c) DFAR 252.227-7037 “Validation of Restrictive Markings on Technical Data”
- (d) DFAR 252.239-7010 “Cloud Computing Services”

- (e) DFAR 252.239-7018 “Supply Chain Risk”
- (f) FAR 252.244-7000 “Subcontracts for Commercial Items and Commercial Components” (DoD Contracts)”
- (g) DFAR 252.246-7003 “Notification of Potential Safety Issues”
- (h) DFAR 252.246-7007 “Contractor Counterfeit Electronic Part Detection and Avoidance System”
- (i) DFAR 252.247-7023 “Transportation of Supplies by Sea”
- (j) DFAR 252.247-7024 “Notification of Transportation of Supplies by Sea”