



**MARINE GROUP BOAT WORKS
SUBCONTRACT/PURCHASE ORDER TERMS AND CONDITIONS**

1. **DEFINITIONS.** As used in these Terms and Conditions: “Buyer” means Marine Group Boat Works, LLC; “Purchasing Representative” means Buyer's authorized representative whose name appears on the face of an Order; “Order” means any purchase order or any written order for goods or services issued by Buyer; “Seller” means the person(s) or company to whom an Order is issued; “FAR” means the Federal Acquisition Regulations (Title 48 CFR Chapter 1) and “DFARS” means the Department of Defense FAR Supplement (Title 48 CFR Chapter 2).
2. **ACCEPTANCE AND AGREEMENT.** These terms and conditions apply to, and are agreed to be incorporated in, any Order issued by Buyer to Seller. An Order becomes a binding contract, including all terms and conditions that appear in the Order, in these Purchase Order Terms and Conditions, and in documents incorporated by reference, either upon acknowledgement in writing or commencement of performance. The Order, including these terms, supersedes all prior written or oral communications and is the sole and exclusive statement of the agreement between Buyer and Seller. It is not subject to variation, regardless of the wording of any purported acceptance by Seller, unless stated in a written agreement signed by Buyer's Purchasing Representative. Any additional or different terms appearing in Seller's acceptance are hereby expressly rejected.
3. **PACKING AND SHIPPING.** Seller shall pack, mark and ship all goods in accordance with specific requirements of an Order, and in a manner which complies with transportation regulations and good commercial practice for protection and shipment of goods. No separate or additional charge is payable by Buyer for containers or any other aspect of packing and shipping to the F.O.B. point unless specifically stated in an Order. Seller shall mark the number of an Order on each container and include a packing slip with each shipment, listing Order and line item numbers.
4. **DELIVERY.** Unless otherwise stated on the face of an Order, delivery shall be to Buyer's facility (F.O.B. Destination). Time is of the essence in the performance of an Order. Delivery shall be in strict accordance with the schedule and quantity specified in an Order. ***Seller is on notice that delays in delivery may result in damages assessments including price reduction under Buyer's prime contracts; Seller shall be liable for any such assessments or price reductions.***
5. **NOTICE OF LATE DELIVERY.** Seller shall give prompt notice to Buyer as soon as Seller has any reason to believe that Seller will not meet schedule. If it appears Seller will not meet schedule or if Seller's deliveries fail to meet the schedule, then in addition to any other right or remedy that Buyer has under law or this Order, Buyer may require Seller to ship via expedited means at Seller's expense. If Seller's delay is due to causes beyond Seller's control and without Seller's fault or negligence, and if Seller has exercised due diligence by promptly notifying Buyer in writing of the conditions which will result in delay, then Seller shall not be liable for delay. If Seller's delay is caused by the default of a subcontractor or supplier, and such default arises out of causes beyond the control of both Seller and its subcontractor or supplier, and without the fault or negligence of either of them, and if the supplies or services to be furnished by Seller's subcontractor or supplier are not obtainable from another source in



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sufficient time to permit Seller to meet the required schedule, Seller shall have no liability for delay. Notification of delay pursuant to this clause shall not constitute a waiver of any of Seller's other obligations nor a waiver by Buyer of any right under an Order.

6. **INVOICES AND PAYMENT.** After Buyer's receipt of conforming goods and of a proper invoice, in accordance with the specific payment terms of any Order, Seller will be paid the price stated in an Order for supplies delivered and accepted, or services rendered and accepted, less deductions if any as provided by the Order. Cash discounts are determined by receipt date of supplies or services, or of a proper invoice, whichever is later. Payment is subject to set off of any claim of Buyer against Seller arising from this or any other transaction.
7. **INSPECTION AND ACCEPTANCE.** All goods and services shall be of the best marine quality, in addition to any other standards of quality invoked in any Order. Seller shall maintain a quality control system consistent with good commercial and marine practice, unless a specific system of quality control or other standard of quality is specified in an Order or document incorporated by reference. All materials, articles, work or services performed by Seller shall be made available for inspection or test at Seller's plant or that of Seller's subcontractor by authorized representatives of Buyer or Buyer's customer, or both. No inspection or test prior to final inspection and acceptance shall relieve Seller from responsibility for defects or other failure to meet the requirements of an Order. All materials, articles, work or services shall be subject to final inspection and acceptance by Buyer after delivery to destination, notwithstanding prior payment. Acceptance shall not be final with respect to latent defects, fraud, or such gross mistakes as amount to fraud, or as to Seller's warranty obligations.
8. **WARRANTY.** Seller warrants that all materials, articles, work and services furnished will be free from defects in material and workmanship will conform to all applicable specifications, drawings, samples and descriptions, that goods of Seller's design or selection will be free from design defects and will be fit for their intended use. Seller warrants that all items or components supplied under an Order shall be new, that is, not used or reconditioned. All warranties and guarantees shall run to Buyer and Buyer's customers, for a period of 18 months after final acceptance by Buyer, or 12 months after the item or vessel in which Seller's goods are incorporated is accepted by Buyer's customer, whichever is later. Seller agrees to repair or replace at its cost any item which does not conform to this warranty, as Buyer directs. These warranties are in addition to any standard warranty or guarantee of Seller, and any warranty and related remedy otherwise created by operation of law.
9. **INDEMNITY REGARDING INTELLECTUAL PROPERTY.** Seller agrees to indemnify and hold harmless Buyer and its successors, assigns or customers from any expense (including attorney's fees and costs), or loss, damage or liability, on account of any infringement or claim of infringement of any United States or foreign patent, copyright or trademark, arising out of or resulting from the sale or use of the materials, articles or services supplied by Seller. Seller also agrees at its own expense to defend any actions, lawsuits or claims in which such infringement is alleged, provided that Seller has first been notified as to the existence of such action, lawsuit or claim.
10. **CHANGES.** This Order may not be changed except by written modification signed by Buyer's Purchasing Representative. Buyer may at anytime by written notice and without notice to sureties, make changes in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of



packing or shipment; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule. Should any such change cause an increase or decrease in the cost of or time required for performance of an Order, an equitable adjustment shall be negotiated and the Order shall be modified accordingly. If no agreement is reached, the equitable adjustment due shall be resolved pursuant to the "Disputes" clause below. Any claim by Seller for such adjustment shall be submitted to Buyer in writing within 15 days of Buyer's written notice of such change. If not submitted within 15 days, the claim is waived. Seller must proceed without delay in performing the Order as changed, even if a "Dispute" is pending and not resolved.

11. **TERMINATION/CANCELLATION/STOP WORK.**

- a. **Termination For Convenience.** The performance of work under an Order may be terminated in whole or in part by Buyer for Buyer's convenience, at any time and without regard to whether Buyer's contract with its customer may have been terminated. The rights, duties and obligations of the parties including compensation to be paid to Seller shall be in accordance with FAR Subparts 49.1 and 49.2 as if Buyer was in the position of the Government, Buyer's Purchasing Representative was the Termination Contracting Officer, and Seller was in the position of Contractor.
- b. **Termination For Default.** Buyer may, by written notice to Seller, terminate this Order in whole or in part for Default if Seller fails to (i) deliver supplies or perform services within the time specified, (ii) make progress so as to endanger performance of an Order and fails, within 10 days of written notice of such failure, to cure that failure or otherwise provide adequate assurance of performance, or (iii) perform any other provision of this Order. If Buyer terminates in whole or in part for default, Buyer may acquire under terms that Buyer considers appropriate materials or services similar to those terminated. Seller shall be liable to Buyer for any excess costs for reprourement of supplies or services. At the time of termination or thereafter, Buyer may at its option also require Seller to transfer title and deliver to Buyer any completed supplies, partially completed supplies, or materials, parts, tools, dies, jigs, fixtures and the like that Seller has specifically produced or acquired for the terminated portion of this Order. Subject to Buyer's right of setoff for excess reprourement costs or other damages, Buyer shall pay Seller the contract price for completed supplies delivered and accepted by Buyer. Buyer and Seller shall agree on the amount of payment for partially completed supplies, or materials delivered to Buyer at Buyer's specific direction. Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under an Order. In the event it is later determined by a court, arbitrator, or other tribunal with jurisdiction that Seller was not in default, the termination shall be deemed to have been for the convenience of Buyer, in which case Seller's exclusive remedy will be for payment as provided in subparagraph a. above.
- c. **Stop Work.** By written notice Buyer may require Seller to stop work for a period not to exceed 120 days in accordance with the clause at FAR 52.242-15 "Stop Work Order (Aug 1989)", incorporated by reference and altered to insert "Buyer" and "Buyer's Purchasing Representative" for "Government" and "Contracting Officer", and to substitute "Seller" for "Contractor."



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12. **DISPUTES.** If Buyer's contract with its customer contains a "Disputes" clause or procedure, any claim or demand by Seller which derives or results in any way from an act or omission of Buyer's customer which is not resolved by agreement may, at Buyer's election, be submitted for resolution pursuant to the customer contract "Disputes" clause. In that event, Seller's sole remedy will be the "Disputes" procedure in Buyer's contract with its customer, and Seller's recovery is limited to the amount, if any, recovered from Buyer's customer on Seller's behalf. Pending resolution, Seller shall not take any another action, including but not limited to pursuit of independent litigation with respect to any claim or demand, pending final determination under Buyer's prime contract "Disputes" provision. Seller shall not be entitled to receive from Buyer any amount greater than Buyer actually receives from Buyer's customer on account of Seller's claim, less any markups and costs incurred by Buyer. All claims and disputes between Buyer and Seller not originating with acts or omissions of Buyer's customer and not settled by mutual agreement, shall be decided by arbitration conducted in accordance with California Code of Civil Procedure Part III Title 9 (excluding Section 1283.05). The arbitration shall be conducted in San Diego County California by a single arbitrator agreed upon by the parties or appointed pursuant to California Code of Civil Procedure Section 1281.6.

Except to the extent that Federal law may apply to the interpretation of FAR and DFARS clauses incorporated herein and to maritime matters, this contract shall be governed by and construed in accordance with the laws of the State of California.

13. **ASSIGNMENTS AND SUBCONTRACTING.** Seller may not assign an Order or any portion thereof without the written consent of Buyer. Seller agrees to obtain Buyer's written approval before subcontracting performance of an Order or any substantial portion thereof. Buyer's approval of any such subcontract shall not relieve Seller from any obligations imposed by these terms.
14. **COMPLIANCE WITH LAWS AND REGULATIONS.** Seller warrants that Seller's performance of an Order shall comply with all federal, state and local laws and regulations.
15. **TAXES.** Unless otherwise specified in writing on the face of an Order, the prices stated include all applicable state, federal and local taxes.
16. **DRAWINGS, SPECIFICATIONS, INTELLECTUAL PROPERTY AND TECHNICAL DATA.** The ideas, information, designs, drawings, specifications and any other data or business and manufacturing information supplied by Buyer shall remain Buyer's property. Such data shall be retained in confidence by Seller and shall not be disclosed to any other person or entity and shall not be used or incorporated into any product or item that is manufactured for or supplied to anyone other than Buyer.
17. **REMEDIES AND NON-WAIVER.** The remedies reserved to Buyer by these terms are not exclusive and shall be cumulative and in addition to any other right or remedy provided by law or equity. No waiver of a breach, or a failure to enforce any provision of an Order, shall constitute a waiver of any subsequent breach or of any other provision. If any provision of an Order is void or becomes void or unenforceable, by operation of law, all other provisions shall remain in full force and effect.
18. **ANTI-KICKBACK COVENANT AND PROHIBITION OF GIFTS AND GRATUITIES.** Seller is hereby notified that Buyer is subject to the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58) and



implementing regulations and contract clauses. Seller is strictly prohibited from providing or attempting to provide, or offering to provide, any money, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind directly or indirectly to Buyer or any of its employees or other subcontractors. Seller agrees to report promptly to Buyer's Chief Executive Officer any solicitation or request for a kickback. Seller's breach of the foregoing prohibition or of the obligation to report shall be considered a material breach of this Order and any other order or contracts between Buyer and Seller.

19. **PROHIBITION OF GRATUITIES TO BUYER'S PERSONNEL.** Seller is hereby on notice that Buyer's personnel owe complete loyalty to Buyer and are forbidden to accept money or things of value from any supplier of goods, materials or services to Buyer, regardless whether such acceptance would constitute an act prohibited by Anti-Kickback laws and regulations. Seller for itself and its principal owners, shareholders, and officers warrants and represents that no employee of Buyer has any financial interest in Seller except such as has been disclosed in writing to Buyer's Chief Executive Officer. Further, Seller has not and will not give anything of value to any employee of Buyer, except promotional or commemorative items having a value of less than \$50, and food and refreshments served in connection with business meetings. Breach of the foregoing warranty and covenant shall entitle Buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller existing at the time that Buyer learns of any such breach, and regardless of when such breach occurred.

20. **ADDITIONAL PROVISIONS FOR SELLERS PERFORMING WORK AT BUYER'S FACILITY.** The following applies to any Seller performing work at Buyer's boatyard:

- a. All personnel of Seller who enter Buyer's facility shall be subject to Buyer's rules and practices for safety, security and for identification and handling of hazardous wastes; Seller is responsible to familiarize its employees with those rules and practices of Buyer.
- b. Seller shall be responsible for maintaining all insurance required by Buyer's standard requirements, which will be separately provided to Seller.
- c. Seller shall indemnify and hold harmless buyer against any liability or cost, including attorneys fees, incurred as a result of Seller's employees' activities on Buyer's premises, including but not limited to liability to any of Seller's employees for wages, benefits or compensation for injuries or illness and further including but not limited to liability for injury or damages to persons or property, including property of Buyer's customers, caused by acts or omissions of any of Seller's employees or subcontractors.
- d. Buyer may, at its absolute discretion and for any reason, require Seller to remove from Buyer's premises any employee or subcontractor of Seller and Seller shall immediately comply.
- e. Buyer is subject to U.S. Government security requirements. All employees of Seller granted access to Buyer's premises shall be lawful residents of the United States; Buyer shall provide verification of that status for any employee upon demand of Buyer.



- f. In performing work on Buyer's premises, Seller shall work so as not to interfere with work of Buyer, Buyer's customers, or other subcontractors to Buyer. Seller shall cooperate with Buyer in establishing work schedules and shall, without additional charge or cost to Buyer, comply with all work schedules issued by Buyer.
- g. Seller's personnel on Buyer's premises shall work during Buyer's normal work hours. Seller shall not work overtime or outside of normal working hours without Buyer's written authorization.

21. **FEDERAL GOVERNMENT CONTRACT PROVISIONS.** If the face of the Order identifies a prime contract with the United States, or if Seller otherwise is advised that the Order is in furtherance of a prime contract with the United States, or of a subcontract under such prime contract, the following provisions of FAR and DFARS in effect on the date of the Government contract are hereby incorporated by reference. Except as specifically indicated to the contrary below, as used in the following provisions, the term "Contract" means an Order, the terms "contractor" or "offeror" mean Seller, and the terms "Government" and "Contracting Officer" mean Buyer.

<u>FAR Section</u>	<u>Title and Applicable Limitations</u>
52.203-6	Restrictions on Subcontractor Sales to the Government (applies to Orders over \$100,000; "Government" remains unchanged).
52.203-7	Anti-Kickback Procedures (excepting subparagraph (c)(1)) (applies to Orders over \$100,000).
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction (applies if an Order exceeds \$100,000: by accepting an Order, Seller certifies it has not used appropriated funds to influence federal transactions and that it complies with the disclosure provisions).
52.203-12	Limitations on Payments to Influence Certain Federal Transactions (applies if Order exceeds \$100,000).
52.204-2	Security Requirements
52.209-6	Protecting Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (applies to Orders over \$30,000. "Government" and "Contractor" remain unchanged. By accepting an Order, Seller certifies that it is not debarred, suspended, or proposed for debarment unless Seller otherwise has notified Buyer's Purchasing Representative).
52.211-5	Material Requirements.
52.211-15	Defense Priority and Allocation Requirements (applies if a defense priority rating appears on the face of an Order or Buyer otherwise advises Seller of a Defense Priority rating).



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- 52.215-14 Integrity of Unit Prices (subparagraph (b) is deleted).
- 52.215-15 Pension Adjustments and Asset Reversion (applies as described at FAR 15-408(g)).
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (applies as described in FAR 15-408(j)).
- 52.215-19 Notification of Ownership Changes (applies as described at FAR 15.408(k)).
- 52.215-21 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications.
- 52.219-8 Utilization of Small Business Concerns (applies as described at FAR 52.219-9(d)(9)).
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-4 Contract Work Hours and Safety Standards Act--Overtime Compensation (applies to Orders exceeding \$100,000 and must be flowed down to Seller's subcontractors).
- 52.222-21 Prohibition of Segregated Facilities (by accepting an Order, Seller certifies that it does not and will not maintain segregated facilities and does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained).
- 52.222-22 Previous Contracts and Compliance Reports (by accepting an Order, Seller certifies that it has participated in a contract or subcontract subject to the Equal Opportunity clause and has filed all required compliance reports, unless Seller otherwise notifies Buyer's Purchasing Representative).
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (applies if an Order exceeds \$100,000).
- 52.222-36 Affirmative Action for Workers with Disabilities (applies if an Order exceeds \$10,000).
- 52.222-37 Employment Reports on special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (applies if an Order exceeds \$100,000).
- 52.222-39 Notification of employee rights concerning payment of union dues or fees
- 52.222-50 Combating Trafficking in Persons
- 52.223-3 Hazardous Material Identification and Material Safety Data



52.223-11	Ozone-Depleting Substances
52.223-14	Toxic Chemical Release Reporting (applies to orders exceeding \$100,000)
52.224-2	Privacy Act
52.225-8	Duty-Free Entry (applies as stated in subparagraph (j)).
52.225-13	Restrictions on Certain Foreign Purchases
52.227-1	Authorization and Consent (in which "Government" and "Contracting Officer" remain unchanged) (applies to orders exceeding \$100,000)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (applies as set forth at (c) of the clause; "Government" remains unchanged)
52.227-3	Patent Indemnity
52.227-9	Refund of Royalties (applies as set forth at (f) of the clause)
52.227-10	Filing of Patent Applications-Classified Subject Matter
52.227-11	Patent Rights – Retention by the Contractor (applies as set forth in (k) of the clause)
52.227-13	Patent Rights – Ownership by the Government (applies as provided in (i) of the clause, "Government" remains unchanged)
52.228-5	Insurance – Work on a Government Installation [Applicable to any Order that requires work on a Government installation]
<u>DFARS Section</u>	<u>Title and Applicable Limitations</u>
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies (applies if Order exceeds \$100,000 and is not for commercial items)
252.204-7000	Disclosure of Information
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material
252.223-7004	Drug Free Work Force
252.225-7004	Reporting of Contract Performance Outside the United States
252.225-7012	Preference for Certain Domestic Commodities



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- 252.225-7013 Duty-Free Entry (in which "Government" and "Contracting Officer" remain unchanged)
- 252.225-7014 Preference for Domestic Specialty Metals, Alt. I
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings
- 252.225-7019 Restriction on acquisition of anchor and mooring chain
- 252.225-7025 Restrictions on Acquisition of Forgings
- 252.226-7001 Utilization of Indian Organizations and Indian-owned Economic enterprises, and Native Hawaiian Small Business Concerns (applies to orders exceeding \$500,000)
- 252.227-7013 Rights in Technical Data - Noncommercial Items (applies only if invoked in Buyer's prime or higher tier subcontract; applies as specified in subparagraph (k); "Government" remains unchanged)
- 252.227-7016 Rights in Bid or Proposal Information
- 252.227-7019 Validation of Asserted Restrictions - Computer Software
- 252.227-7030 Technical Data - Withholding of Payment
- 252.227-7037 Validation of Restrictive Markings on Technical Data (in which "Government" and "Contracting Officer" remain unchanged)
- 252.244-7000 Subcontracts for commercial items and Commercial Components