



**Newport News Industrial  
Corporation**

FORM 1-387 Rev. 6 (7/11)

STANDARD TERMS AND CONDITIONS OF WORK FOR SERVICE CONTRACTS

NOTICE TO BUYER

The proposal of Newport News Industrial Corporation (hereinafter Seller) consists of and is subject to Seller's proposal, including its typewritten provisions and these Standard Terms and Conditions of Work. Any order placed with Seller will be accepted subject to Seller's proposal including these Standard Terms and Conditions of Work and by placing such order Buyer thereby waives terms and conditions contained in its order form which are inconsistent with Seller's proposal unless Buyer expressly states in its order the specific Seller's terms and conditions which are unacceptable.

1. **GENERAL** – No agreement shall be binding upon the Seller until accepted in writing by an authorized official of the Seller. Seller's proposal expresses the entire agreement of the parties and no modification, alteration, waiver or provision in Buyer's order or acknowledgement which is inconsistent with or in addition to the terms and conditions of Seller's proposal shall have any force or effect unless the same is specifically accepted in writing by the Seller. Failure of the Seller to enforce any of the rights or remedies hereunder shall not constitute a waiver of such rights or remedies. This Agreement shall be governed, construed and interpreted under the laws of the Commonwealth of Virginia, without regard to the principles of conflict of laws. In the event any provisions of this Agreement are found to be invalid for any reason whatsoever the remaining portion of this Agreement shall remain in full force and effect. This Agreement shall be deemed to include any related plans, drawing specifications and other documents set forth or referenced in Seller's proposal to the extent the same are consistent with these Terms and Conditions, and in the event of conflict the following order of precedence shall govern:
  - a. Seller's proposal, including typewritten provisions and these Standard Terms and Conditions of Work.
  - b. The specifications.
  - c. The plans and drawings.
  - d. Other referenced documents.
2. **EXCUSABLE DELAY** – If, by reason of strikes, labor disputes or other labor disturbances, vandalism, sabotage, non-delivery or late delivery of acceptable materials by suppliers or subcontractors, unavailability of sufficient qualified labor, delay in delivery or non-delivery of acceptable Buyer-furnished property, delays due to energy shortages or interruptions, accidents, delay or frustrations of effort caused by an agency or instrumentality of a locality, state or the United States, by court or administrative action, by government priorities, by civil, naval or military authorities, the elements, natural disasters, acts or omissions of Buyer or of any third party, or any causes over which the Seller does not have reasonable control, Seller is delayed in completion of work, or is prevented from making or be unable to make delivery of goods and services to be provided to Buyer, in such situations no liability of Seller shall result therefrom and the time of performance under this Agreement shall be extended for a period of time to be not less than the period of such delay or delays, and if the delays are caused by action or lack of action of the

Buyer, the compensation shall be equitably increased in accordance with the changes clause if there are increased costs due to such delay.

3. PAYMENT – Payment for services performed shall be in accordance with this Agreement and shall be paid by the Buyer within thirty (30) days of date of invoice. A two percent (2%) monthly interest charge will be added to all accounts past due. Incremental payments for work performed shall be made in accordance with specific proposals. Buyer may not, under any circumstances, however, set off any amount owing at any time from Seller or Seller's affiliated companies to Buyer or any of Buyer's affiliated companies against any amount payable at any time pursuant to this contract by Buyer or any of its affiliated companies to Seller or Seller's affiliated companies.
4. CHANGES
  - a. The Buyer may, upon agreement in writing by the Seller, make changes within the general scope of this Agreement. If any such change causes any increase or decrease in *the cost of and/or the time required* for the performance of any part of the work under this Agreement, an equitable adjustment shall be made in the price of the work or the completion date or both, and this Agreement shall be modified in writing accordingly prior to the performance of any such change. Seller may, at its sole option, proceed with the work so changed prior to negotiation of an equitable adjustment. The Seller will, however, not unreasonably delay the accomplishment of changes made mandatory by lawful actions of appropriate regulatory bodies provided that the buyer shall not delay the prompt adjudication of the equitable adjustment required under this Article.
  - b. If, at any time after the submittal of a bid or proposal by the Seller, there is any change in Federal, State or Local laws directly or indirectly concerning performance of this contract which results in the Seller being required to pay or bear the burden of such change, or increases the time of performance of work, an equitable adjustment shall be made in the contract price, delivery schedule and any other provisions of this contract which may reasonably require amendment as a result of such change. For the purpose of this Article:
    1. Federal, State and Local laws shall include Constitutions, statutes, ordinances, regulations, rulings, interpretations, and court decisions promulgated or interpreted by federal, state or local governments and any of their agencies, departments or other instrumentalities.
    2. Change in law shall be deemed to mean amendment or repeal of an existing law or regulation, the enactment of a new law or regulation, change in interpretation or new interpretation of a law or regulation, whether by court decision or otherwise.
5. SERVICES PERFORMED – Should the work, as defined herein, include consultations, preparation of reports and training courses, providing class instructions, on-site repairs, or be the test, inspection, evaluation or examination of any Buyer-owned, supplied, or designated equipment, facilities, machinery, premises or workmanship, the Seller agrees to perform such work utilizing qualified personnel upon the condition that such personnel shall have free access to all parts of Buyer's premises for the purpose of conducting any required work, at any time of the day or night during which Buyer's employees are working therein and it being mutually understood that:
  - a. Seller shall not be liable directly or indirectly for any loss, damage or injury to the property or persons resulting from any accident to or defect in any object so inspected, tested, evaluated or examined, nor shall the Seller be liable directly or indirectly for loss, damage or injury of any kind arising from or connected with inspection or a report of inspection or from omission of an inspection or a report of inspection, whether or not such inspection or report or omission was at the request of the Buyer.
  - b. The Buyer will indemnify, defend and save harmless the Seller from and against any and all loss, damage, injury (both to persons and/or property), liability, claims, or suits therefrom, by or on behalf of any person, concern, governmental instrumentality or entity arising out of, resulting from, or in any way connected with the performance or failure to perform by the Seller

all or any part of any test, inspection or examination under this Agreement, whether the same be caused by the negligence of the Seller or its officers, agents, employees, or otherwise. The Seller will give reasonable notice to the Buyer of any such claim or suit. It is further agreed that such indemnification shall not be applicable to the extent that the Seller is protected or otherwise indemnified by the United States Government or any agency thereof.

6. **TERMINATION** – This Agreement may be terminated at any time by either party by giving reasonable notice, in writing, to the other party. In the event Buyer requests termination, he shall pay to Seller, within thirty (30) days of final billing for such termination, all costs and other expenses incurred by the Seller prior to notice of termination plus all costs associated with the termination itself (including but not limited to: Engineering expenses, termination costs, unabsorbed overhead, expenses and settlements of claims of Seller's vendors, subcontractors and agents arising prior to or as a result of such termination), together with all other reasonable costs and expenses incurred by Seller, plus an amount equal to the profit due the Seller as a result of the performance of the work under this Agreement prior to the receipt of the request for termination.
7. **SECURITY** – Unless specifically agreed to by Seller, no security clearances will be provided for Seller's personnel assigned to or involved in the performance of the work under this Agreement. If, later, security clearances are required by the Buyer for such personnel, then the time for the completion of the work hereunder shall be extended in accordance with the Article of this Agreement entitled "Changes" and the cost of acquiring security clearance, including the processing and background investigation, shall be added to the contract price.
8. **SUSPENSION OF WORK** – Buyer may order Seller to suspend, delay or interrupt all or part of the work for a reasonable period of time for the convenience of Buyer; provided, however, an equitable adjustment shall be made at the end of the suspension in the period of performance and in the price of the work, for any delays and/or increase in cost of performance of the work caused by such suspension, including profit, handling and storage charges, and costs associated with delay or interruption and this Agreement shall be modified, in writing, accordingly. Seller shall notify Buyer, in writing, of any act or failure to act of Buyer resulting in a suspension, delay or interruption of the work as soon as practicable after the termination of such suspension, delay or interruption. No suspension shall apply to the submittal of invoices or the payments thereon. Seller shall have the right to reassign immediately upon notice of suspension of work, its personnel assigned to the job and work shall resume only when suitable personnel can be made available by the Seller.
9. **DISCLOSURE OF PROPRIETARY DATA, KNOW-HOW OR INFORMATION** – Unless expressly agreed upon in the contract between the parties, any knowledge, data or information, including but not limited to designs, drawings and other data, which Buyer shall disclose to Seller in connection with the performance of this Agreement shall not, unless otherwise specifically agreed to in writing by Seller, be deemed confidential or proprietary information and shall be acquired free from any restriction or liability other than that arising under the patent laws of the United States.
10. **HEALTH, SAFETY AND SAFETY DEVICES** – The Seller shall take all reasonable precaution in the performance of the work under Agreement to protect the health and safety of its employees, provided, however, that the Seller shall have no responsibility, except as otherwise specifically agreed to by Seller in writing, with respect to any goods and equipment provided under this Agreement, to sell or install any devices on such goods or equipment to protect personnel from injury while the equipment is in operation. Buyer agrees to indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the installation, maintenance and operation of any equipment provided or used hereunder because of Buyer's installation, maintenance and operation of the equipment, or

because of the lack of devices on the equipment to protect personnel from injury while the equipment is in operation, whether or not required by law or regulations of governmental bodies having appropriate jurisdiction. In accordance with and subject to the provisions of the Article hereof, entitled, "Changes", Buyer shall notify Seller on a timely basis of any requirements for specific safety devices consistent with the intended use of the equipment to be provided hereunder, and any requirements with respect thereto of Federal, State, and Local law. And provided also, that Seller shall not be responsible for the site conditions on Buyer's property, whether created by Buyer or Buyer's other contractors or otherwise, and Buyer shall hold harmless, defend, and indemnify Seller from any claims, demands, suits, or actions arising out of or related to conditions on Buyer's site, including but not limited to liabilities for personal injury, property damage, or environmental cleanup.

11. EMPLOYMENT OF PERSONNEL – It is agreed that should the Buyer or its affiliated companies hire or employ directly or from any intermediate employer, whether or not affiliated with either the Buyer or Newport News Industrial Corporation, any personnel furnished by Newport News Industrial Corporation under this contract during the term of this contract or for a period of one year after completion of this contract, the Buyer shall pay Newport News Industrial Corporation an amount equal to the annual wage rate for each person so hired or employed as mutually agreeable liquidated damages.
12. TAXES – All Sales, use and excise taxes of any kind whatsoever levied on the Seller or the Buyer in connection with the services rendered pursuant to this Agreement shall be an obligation of the Buyer.
13. INSURANCE – The Seller shall maintain Workmen's Compensation, general liability, auto liability and such other insurance as will furnish Seller reasonable protection against certain claims which may arise from operations during this Agreement. The existence of such insurance shall not modify any obligation or duty of the Buyer as specified under this Agreement.
14. AUDITS – Seller shall not permit a financial audit or afford access to its books or financial records to Buyer or any third party except as specifically agreed to by Seller in writing; however, Buyer may be provided time records to verify work hours for hourly rate projects upon request.
15. BUYER-FURNISHED ITEMS – Buyer shall provide 220 Volt/400 Amp/3 Phase current or whatever other power source required and potable tap water service if requested by Seller.
16. DESIGN SERVICE – If this Agreement calls for the provision of design services by the Seller, then upon completion of such services, the Buyer shall carefully study and compare the Agreement, drawings, specifications, modifications, addenda and other pertinent documents and shall at once report to the Seller any errors, inconsistencies or omissions Buyer may discover, but the Seller shall not be liable to the Buyer or third persons for any damage resulting from any errors, inconsistencies, or omissions, except as otherwise provided herein.
17. WARRANTY – Seller will re-perform any work that does not conform to the requirements of this Agreement provided Buyer notifies Seller within thirty (30) days of the completion of the service provided hereunder as to such nonconformity. Seller shall have no further liability with respect to services rendered. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR WORKMANLIKE SERVICES.

## 18. LIMITATION OF LIABILITY

- a. Under no circumstances shall the Seller be liable for any special, incidental, indirect, contingent or consequential loss or damage whatsoever. Seller's liability on any claim of any kind whether arising in contract or in tort, including negligence, and whether arising under the Article of this Agreement entitled, "Warranty", or arising out of any delay or failure of delivery, or arising out of any breach or failure by the Seller whether occurring prior to or after the date of delivery or performance of work, shall in no case exceed the price paid by the Buyer under this Agreement or Ten Thousand Dollars (\$10,000), whichever is less.
- b. Neither the Seller nor any person acting for the Seller makes any warranty or representations expressed or implied with respect to the accuracy, completeness, or usefulness of any information produced as a result of this Agreement, or that the use of any information, service, training, apparatus, method, or process disclosed or provided may not infringe privately owned rights; or assumes liability with respect to the use of, or for damages resulting from the use of any information, service, training, apparatus, method, or process disclosed or provided. Seller's liability shall be confined solely to the obligation to re-perform any services not conforming to the requirements of this Agreement and shall not include liability for any damages (including, but not limited to, consequential damages) possibly resulting from deficiencies in services performed.

19. NUCLEAR INDEMNIFICATION – In the event the Services and/or material provided are related to or performed at or on a nuclear facility or system or are to be incorporated into a nuclear facility or system, the provision of Form 1-391, Appendix A, "Nuclear Indemnity Provisions for Newport News Industrial Corporation Standard Terms and Conditions", will apply and become a part of this contract.

20. BILLING RATE CONDITIONS – The following sets forth the billing rate conditions:

- a. Straight Time – Eight out of nine consecutive hours worked in a twenty-four period, Monday through Friday, shall be considered a normal work day and will be billed at the straight time rate.
- b. Overtime – Time worked in excess of eight hours, Monday through Friday, and time worked on Saturdays, Sundays and Holidays will be billed at the overtime rate for each hour or part thereof.
- c. Minimum Rate – Charges shall be billed for a minimum of eight hours at the straight time rate, Monday through Friday, beginning the first day Seller's representatives are available to work, and shall run consecutively for each day which they are available for work, regardless of the hours worked, due to the requirements of the Buyer on any particular day, until they leave to return to Newport News Industrial Corporation, Newport News, Virginia.  
Charges shall be billed for a minimum of four hours at the overtime rate each time the Seller's representative is recalled to work after working eight hours regardless of the time actually worked. Time worked in excess of four hours will be billed accordingly at the overtime rate.
- d. Travel – Authorized travel time is billed at the daily rate (eight times the straight time hourly rate), regardless of actual travel time involved. Actual travel expenses, including transportation, lodging, subsistence and incidental expenses incurred by Seller's representatives while in a travel status in connection with this contract, shall be billed to the Buyer's account. Coach class air accommodations shall be used except when not reasonably available to meet necessary schedule requirements.
- e. Per Diem – In addition to hourly rates, a per diem charge per man as set forth in Seller's proposal shall be billed for each calendar day on which the representative is away from Newport News, Virginia, with the exception of travel time.
- f. Hours Worked – Hours worked by Seller's personnel are in addition to any hours worked by supportive personnel at the Newport News Industrial Corporation home office or elsewhere. Both categories of hours worked shall be billed and payable under this contract.

21. HOLIDAYS –Holidays shall be those days designated by Seller’s Company policy. Although they may vary, the following represent probable holidays.
- a. New Year’s Day
  - b. Martin Luther King, Jr. Day
  - c. Memorial Day
  - d. Independence Day
  - e. Labor Day
  - f. Thanksgiving Day
  - g. Friday After Thanksgiving Day
  - h. Christmas
  - i. Seller’s Holiday plant shutdown which typically runs from Christmas Eve through New Year’s Day

In addition, any days which are recognized by the Buyer or the state in which work is being performed as a holiday shall be considered a holiday under this contract. All holidays which occur during a weekend shall be observed the day before or day after the weekend period.

22. DISPUTES. The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within five days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, either Party may elect to seek other remedies as may be available in law or in equity in accordance with the laws of the Commonwealth of Virginia for agreements made in and to be performed in that Commonwealth. The parties agree that venue for such actions will be the federal or state courts located in Newport News, Virginia.

23. COMPLIANCE WITH LAW. The Parties shall comply with all applicable federal, state and local laws and regulations including Executive Orders of the President of the United States. Each Party hereto represents that it will comply with the United States Foreign Corrupt Practices Act in connection with the performance of the activities contemplated by this Agreement. The Parties further agree that they will not directly or indirectly pay, offer or authorize payment of anything of value (either in the form of compensation, gift, contribution or otherwise) to any person, entity or organization contrary to applicable law, including the laws of the United States, or which creates the appearance of impropriety.

24. RELATIONSHIP OF THE PARTIES. Seller is an independent contractor. This Agreement shall not constitute, create, or in any way be interpreted as a partnership, joint venture or formal business organization of any kind. This Agreement does not establish any relationship of principal or agent; and neither Party shall have any power or authority to accept on behalf of the other any offer, agreement, or contract, or to make, incur, contract or create any claim, promise, guarantee, debt, obligation, expense or liability of any kind whatsoever in the name of, on behalf of or for the account of the other Party. Except to the extent of a breach of this Agreement, neither Party shall acquire, by virtue of this Agreement, any liability to the other Party for expenses, risks or liabilities incurred by the other Party.

25. EXPORT CONTROLS. Information exchanged pursuant to this Agreement may include the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export

Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). For information that qualifies as Technical Data, software or Defense Articles, as those terms are defined in the applicable Export Laws and Regulations, the following shall apply:

(a) Receiving party represents and warrants that it is either a U.S. Person as that term is defined in the Export Laws and Regulations, or that it has disclosed to disclosing party in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Receiving party shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Receiving party shall not give any Foreign Person access to the items described in paragraph 3.2 or use any of such items to provide unauthorized Defense Services as defined in applicable Export Laws and Regulations without the prior written consent of disclosing party. Any request for such consent must state the intended recipient's citizenship(s), status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as disclosing party may reasonably request. No consent granted by disclosing party in response to receiving party's request hereunder shall relieve receiving party of its obligations to comply with a. above or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements (a) above, nor constitute consent for receiving party to violate any provision of the Export Laws and Regulations.

(c) Receiving party shall indemnify and save harmless disclosing party from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suits, allegations or charges of receiving party's failure to comply with the provisions of (a) or (b) above or receiving party's breach of the warranty set forth in (a) above. Any failure of receiving party to comply with these requirements or any breach of the warranty contained in this paragraph shall be deemed a material breach of this Agreement.