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NAF Business & Support Services, MR
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MCX TERMS AND CONDITIONS for Resale Merchandise (1 May 2014)

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1. LEGAL STATUS. The Marine Corps Exchange (MCX), including its offices, individual exchanges and overseas exchange system, is an activity of the Marine Corps Community Services (MCCS) and Headquarters Marine Corps, NAF Business and Support Services Division (MR), is an integral part of the Department of Defense, and is a nonappropriated fund instrumentality (NAFI) of the United States (U.S.) Government. MCX contracts are U.S. contracts; however, they do not obligate appropriated funds of the United States except for a judgment or a compromise settlement in suits brought under the provision of the Contract Disputes Act (41 USC 601-613), in which event MCX will reimburse the U.S. Government (31 USC 1304[c]). MCX procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at <http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf> and Marine Corps Order P7010.20 available at <http://www.marines.mil/news/publications/Documents/MCO%20P7010.20.pdf>. (NOTE: The Federal Acquisition Regulation [FAR] published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to MCX procurement except for those provisions of the FAR that have been administratively adopted by MCX.)

2. AUTHORITY TO BIND and DEFINITIONS. As used throughout this contract, the following terms shall have the meaning set out below:

a. "MR" identifies the NAF Business and Support Services Division, Headquarters, United States Marine Corps. "MCCS" identifies United States Marine Corps Community Services activities. "MCX" identifies the Marine Corps Exchange.

b. "Contract" identifies this contract or any modification thereto.

c. "Contracting Officer" is any person, including buyers, granted authority in writing to act on behalf of MCX to execute, administer, modify and terminate, and take other actions relating to contracts, purchase orders, or other agreements. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) Other MCCS and government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions in behalf of the contracting officer. These officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of other MCCS or government officials should be referred to the contracting officer.

d. "Contractor" means the vendor, individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

3. PROCUREMENT INTEGRITY

a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this MCX purchase action:

(1) That no discussion, offer or promise of future employment or business opportunity has nor will be made to MCX civilian or military personnel who personally and substantially participate in the purchase action;

(2) That no offer, promise or gift of any gratuity, entertainment, money, or other thing of value has nor will be made to any MCX civilian or military personnel or any other employee of the U.S. Government or member of their family or household;

(3) That no information proprietary to other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under MCX procedure.

(4) That no person or selling agency has been employed or retained to secure this contract for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the contractor for the purpose of securing business.

b. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other thing of value) were nor will be solicited or accepted by the contractor, or any contractor representative, from any subcontractor or subcontractor representative, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when there are reasonable grounds to believe a violation may have occurred. The contractor will cooperate fully with any federal agency investigation of a possible violation of this clause.

d. For breach of any of these certifications, MCX may terminate this contract for default, and or deduct from amounts due under this or other contracts, or charge contractor for, the total value of any contingent fee, gratuity or kickback or other loss to MCX arising out of the breach.

4. EXAMINATION OF RECORDS. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after final payment under the contract. The Contractor agrees to include this clause in all subcontracts.

5. ORAL REPRESENTATIONS. The written purchase order or contract includes the entire agreement between the parties. MCX will not be bound by any oral or written representation not included in the written purchase order or contract or a change or amendments thereto. MCX will not be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the purchase order or contract and signed by the Contracting Officer.

6. CHANGES. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for MCX in accordance with such drawings, designs, or specifications; (b) time of delivery; (c) place of delivery; or (d) method of shipment or packing. If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Claims for constructive changes to the contract will not be considered.

7. ADVERTISEMENTS. The contractor will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States Government. Any contractor advertisement, including cents off coupon, which refers to MCX will contain a statement that MCX neither paid nor sponsored the advertisement, in whole or in part.

8. ASSIGNMENT. Contractor shall not assign its rights or delegate its obligations under this contract without the prior written consent of the Contracting Officer.

9. TERMINATION BY NOTICE. Either party may terminate any and all performance under an individual purchase order, provided such notice is given not less than thirty (30) calendar days before performance is required. Notice must be given in writing, to include electronic mail.

10. DISPUTES

a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes MCX is liable.

(Signature of Individual Authorized to Bind Contractor)"

(NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES).

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor. The Contracting Officer's decision will be final and conclusive unless:

(1) Within 90 days from the date of Contractor's receipt of the Contracting Officer's Final Decision, Contractor mails or otherwise furnishes the Contracting Officer a written appeal (two copies) addressed to the Armed Services Board of Contract Appeals (ASBCA); or

(2) Within 12 months from the date of Contractor's receipt of the Contracting Officer's Final Decision, Contractor brings an action in the United States Court of Federal Claims.

g. The decision of the ASBCA is final and conclusive except:

(1) Contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within 120 days of receipt of a copy of the decision of the ASBCA.

(2) MCX, MR, or MCCS may transmit the decision of the ASBCA to the United States Court of Appeals for the Federal Circuit for judicial review within 120 days from the date of MCX, MR, or MCCS' receipt of a copy of the decision of the ASBCA.

(3) ASBCA decisions made under the Board's small claims (expedited) procedures (\$50,000 or less) may be set aside only in case of fraud. In all other cases, the ASBCA decisions on questions of fact may be set aside only where the decisions are fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decisions are not supported by substantial evidence. The decisions of the ASBCA on any questions of law will not be final or conclusive as to the United States Court of Appeals for the Federal Circuit.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay MCX, MR, or MCCS an amount equal to the unsupported part of the claim plus all MCX, MR, or MCCS costs attributable to reviewing that part of the claim.

11. INDEMNIFY AND HOLD HARMLESS

a. Contractor shall indemnify, hold harmless and defend MCX, MR, and MCCS and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation, infringement, or claim of any patent, copyright or trademark rights or any other misuse of Intellectual Property asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of MCX, MR, MCCS, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

- b. MCX, MR, and MCCC will give Contractor notice and an opportunity to defend.

12. EQUAL EMPLOYMENT OPPORTUNITY

a. The contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated by reference.

b. Orders during a calendar year in the amount of \$1,000,000 or more will not be made unless the contractor, and each first-tier subcontractor which will receive a subcontract of \$1,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

13. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. If orders during a calendar year equal or exceed \$10,000 and are not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action Clause as set out in Title 41, code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

14. AFFIRMATIVE ACTION AND NONDISCRIMINATION FOR WORKERS WITH DISABILITIES. If orders during a calendar year equal or exceed \$2,500 and are not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, par 60-741, which are incorporated herein by reference.

15. CONVICT LABOR. In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public law 89-176, September 10, 1965 (18 USC 4082[c][2]) and Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987.

16. TAXES. The contractor assumes complete and sole liability for all federal, state and local taxes applicable to the property, income and transactions of the contractor. The prices charged MCX will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes that are not applicable:

- a. Because of MCX legal status as an instrumentality of the United States Government.
- b. Because of MCX immunity from direct state or local taxation; or
- c. Because of federal state or local tax exemptions for sales to the Federal Government;
- d. Otherwise, such as items purchased for export.

It will be the sole responsibility of the contractor to explain, to the reasonable satisfaction of the contracting officer, the applicability and amount of any taxes that they have included in the

prices charged. The contracting officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

17. ROBINSON – PATMAN ACT

a. MCX is a Nonappropriated Fund instrumentality of the U.S. Government, HQMC, NAF Business and Support Services Division, performing governmental functions, and partakes of all the immunities of the U.S. Government.

b. The Robinson-Patman Act makes it unlawful to discriminate in price between different purchasers if it may substantially lessen competition or create a monopoly. Inquiries are often received after contractors are requested by MCX to offer prices as favorable as or better than those offered to their other customers. The Robinson- Patman Act does not apply to sales to MCX or other element of the U.S. Government. Contractors may legally offer MCX prices more favorable than they offer to other customers. Neither the offer by the contractor nor the acceptance by MCX is a violation of the Robinson-Patman Act.

18. MAILING LIST. Under no conditions will contractor sell or otherwise disseminate name and address information on MCX customers to other persons or firms. The contractor agrees to restrict its use of such information to the performance of this contract.

19. ENVIRONMENTAL PROTECTION. The Contractor will comply with all applicable Environmental Protection laws and regulations.

20. WARRANTY. Contractor warrants that:

a. The items furnished will be merchantable and fit and sufficient for the use intended. “Seconds,” “imperfect,” or “irregulars,” as those terms are normally understood in the trade, will be accepted only when specifically required in the contract. This warranty will survive MCX acceptance of the items and is in addition to other warranties of additional scope given to MCX by the contractor. Any warranty given by the contractor will be at least as good as the warranty offered to other agencies and instrumentalities of the United States.

b. The items or service furnished are covered by the most favorable warranties the contractor gives to any customer for such items or services, and that the rights and remedies provided in the contractor’s warranties are in addition to and do not limit any rights afforded to MCX by any other clause of this contract.

c. Where applicable, U.S. made items furnished under this contract are manufactured in accordance with Underwriter’s Laboratories, Inc. (U.L.) standards or equivalent. If manufactured overseas, items furnished must meet the U.L. standards or equivalent or more stringent overseas standards. The applicable items or component items, regardless of where manufactured, must carry the appropriate U.L. or equivalent seal or listing mark.

d. Item warranty, packing, and packaging will comply with all contract terms and all laws, rules, and regulations applicable to delivery for domestic resale.

21. ITEM SUBSTITUTION AND VARIATION IN QUANTITY. No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the contracting officer.

22. INSPECTION/QUALITY ASSURANCE

a. Contractor will maintain an in-process and end-item quality control program to ensure MCX shipments do not include defective/nonconforming items. MCX reserves the right to review and evaluate the program. Review and evaluation may include in-process inspections and initial pilot lot inspections as deemed appropriate at contractor's or subcontractor's facility.

b. Items furnished under this contract are subject to inspection and test at all reasonable times, to include verification inspection, and at all reasonable places including but not limited to the manufacturing or assembly plant, shipping point, depot, and the using or selling activity. MCX may, at its option, inspect in accordance with any commercial or military inspection procedure.

c. If items purchased are defective/nonconforming, the contacting officer may take any of the following actions:

(1) Prior to acceptance - the contracting officer may:

(a) Reject items and return them to contractor.

(b) Reject items and require the contractor to repair or replace them in a reasonable specified time;

(c) Accept the items at an equitable adjustment in price as determined by the contracting officer.

(2) After acceptance - the contracting officer may revoke acceptance and proceed under (1) above.

d. If lots furnished are defective/nonconforming, the contracting officer may take any of the following actions:

(1) Prior to acceptance - the contracting officer may:

(a) Reject and return the lot to contractor.

(b) In lieu of rejection, screen (100% inspect) the items; items meeting contract requirement will be accepted; defective/nonconforming items will be treated as indicated in "c" above;

(c) Reject the lot and require contractor to screen all items and repair or replace defective/nonconforming items will be treated as indicated in "c" above;

(d) Accept the lot and have the items repaired for contractor's account; or

(e) Accept the lot at an equitable adjustment in price as determined by the contracting officer.

(2) After acceptance - the contracting officer may:

(a) Revoke acceptance for any reasonable lot (group of items available for inspection) and proceed as in d. (1) above; or

(b) Revoke acceptance of items and proceed as in “c” above for rejected items.

e. If items/lots are shipped/delivered late, the contracting officer may:

(1) Reject the items/lots and return them to contractor; or

(2) Accept the items/lots at an equitable adjustment in price.

(3) If it is necessary to cover in part or totally because of late shipment/delivery, the contracting officer may include costs of cover in determining the equitable adjustment even though the contract has not been terminated.

f. Exercising of any of the options in the INSPECTION/QUALITY ASSURANCE paragraph, will not preclude action under other clauses of the contract (e.g., Defaults, Returns, etc.) or in accordance with general provisions of law.

g. Invoices, for due dating and prompt payment discount qualifying purposes, will be considered received on the date inspection is completed.

23. PRICES

a. Contractor warrants that during this contract, the net price to MCX (considering unit price, discounts, allowances, co-op advertising, rebates, and other terms and conditions) for each item purchased will be as favorable as, or better than, the price the item is being sold by contractor, to other customers under the same or similar conditions and in the same general geographical area pursuant to agreements made during the same period. In the event contractor subsequently agrees to sell the item to another customer at a lower price, contractor is obligated to promptly offer the lower price, in writing, to the contracting officer. If requested by the contracting officer, the contractor will provide evidence (invoices, price lists, etc. of recent sales to other customers) to establish that the price meets the warranty.

b. In the event contractor subsequently extends special offers (e.g., VPR's, rebates, coupons) or other special terms to other customers, the contractor is obligated to promptly extend them, under the same conditions, in writing, to the MCX contracting officer. If the contracting officer accepts, contractor's obligation under subparagraph a., and this subparagraph, will be to provide a net price as favorable as the terms (as set forth in subparagraph a. and herein) extended to other customers. The contracting officer's written acceptance of a contractor's special offer need not be in the form of a contract modification.

c. The above warranty and obligations may be modified only by written agreement between contractor and the contracting officer, based upon written justification acceptable to the contracting officer.

d. The prices will remain firm for the contract period. However, written requests for adjustment may be considered, when accompanied by documentation substantiating significant and unforeseen cost increases which occurred after the date of award. Granting of any price increase is at the sole discretion of the contracting officer.

24. RETURNS. In any case where items or lots are to be returned (e.g., as defective/nonconforming, late, or under another clause) the contract value of the goods, as of the date the items are returned, will be charged back to the contractor and the following will apply:

a. The contracting officer will notify contractor of decision to return the item/lot and request disposition instructions. Returns of items of lots with a cost price under \$250 may be made without prior notification. The contracting officer may request refund of any payments and an advance to cover the costs of contractor's instructions (e.g. transportation and other related expenses). Title and risk of loss pass to contractor upon shipment from the MCX facility.

b. MCX will deduct the cost of returned items including any transportation costs, from any payment due the contractor. If no money is due the contractor to offset the cost of the returns, a notice of the balance due will be sent to the contractor. The contractor must reimburse MCX within thirty days of the date of the notice. In the event that the thirty days expires and the contractor's debt has not been paid by check or deducted from payments due the contractor, MCX will begin to accrue interest against the balance for each thirty days thereafter. The interest charge will be calculated using the balance due at the end of each thirty day period. The interest rate will be the rate established by the Prompt Payment Act (refer to <http://www.fms.treas.gov/prompt/index.html>).

c. Unless otherwise provided, MCX will retain earned discounts and allowances, such as, but not limited to: prompt payment discounts, distribution allowances, bottom line discounts, special allowances, advertising allowances, discounts in lieu of warranty, and freight allowances. With the exception of freight allowances, all of these discounts or allowances may be credited the contractor on a pro rata basis in conjunction with the return of defective/nonconforming items resulting from inspection and rejection of all or part of a "lot."

d. If contractor fails to provide instructions within ten days or such other reasonable time as the contracting officer allows, refuses to accept returned items or lots, or fails to provide a requested or refund of payment, the contracting officer may, at contracting officer option and in addition to other remedies specified elsewhere in the contract:

(1) Advertise the item/lot in one or more local newspapers or trade journals and sell the item/lot for the best price at the place where the item/lot is located; or

(2) Turn the item/lot over to a government property disposal office if there is no responsive offer from a responsible source to an advertisement ({ 1 } above) or if the contacting officer otherwise determines the item/lot is not readily salable for other than scrap or salvage.

e. MCX will credit contractor for any surplus over the amount due from contractor for payment for the goods and incidental and consequential damages.

f. Contractor must notify the contracting officer in writing within 90 days after a request for payment, or a deduction from payments is made, if returned merchandise is not received or is received in quantities or at prices different from the document supporting a deduction. Claims against MCX for non-receipt will not be honored after this 90 day period.

25. CONTRACTOR LIABILITY. In addition to the liabilities specifically provided for in other clauses, contractor will be liable as follows for failing to fully and timely perform in accordance with all contract provisions:

a. Incidental damages, including expenses reasonably incurred in inspection, receipt, packing, rejection or screening of goods in lieu of rejection, care and custody of goods rightfully rejected, transportation, and any other reasonable expenses incident to contractor's failure to fully and timely perform in accordance with all contract provisions.

b. Contractor will not be liable for incidental damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the contractor and any subcontractors and suppliers. Such causes may include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case, contractor must provide prompt written notice to the contracting officer. The contracting officer may accept late, partial or substituted performance, or may terminate the contract in whole, or in part, effective immediately upon receipt of written notice by contractor.

26. SURVEILLANCE

a. MCX may perform electronic or other types of surveillance in MCX facilities. Contractor will inform its employee representatives that such surveillance may be conducted and that individuals implicated in improprieties may be found unacceptable for employment in any MCX facility, and prosecuted in Federal court for any resulting law violation. Contractor will obtain written certification from all its personnel, to include employees and representatives performing contract functions at exchange facilities, and will maintain the certification on file for the period of the contract. The form for this certification is shown below.

EMPLOYEE CERTIFICATION

I, _____, certify that _____ has informed me electronic surveillance may be used to verify contract compliance and detect improper handling of funds. If a violation is detected, I understand that I may be found unacceptable for employment in any MCX facility and prosecuted in federal court for any resulting law violation.

Signed _____ Dated _____

b. Contractor is liable and will pay MCX for losses under this contract detected by surveillance or otherwise discovered.

27. WITHHOLDING. MCX may withhold payment for:

a. Amounts due or creditable to MCX under this contract (e.g., returns, damages, etc.).

b. Amounts otherwise due or creditable to MCX. Any dispute will be processed under the Disputes clause unless it became due pursuant to another contract which included a Disputes clause.

c. In conjunction with any withholding, MCX will retain the benefit of all earned discounts and allowances including, prompt payment discounts, rebates, distribution allowance, discounts in lieu of warranty, and freight allowances. Prompt payment discounts and rebates will also be considered earned if they would have been earned except for the withholding.

28. NONWAIVER OF DEFAULTS. Any, failure by MCX at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof, and will not affect or impair such terms and conditions in any way, or MCX's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

29. DEFAULTS

a. The contracting officer by written notice of default, may terminate any bilateral contract in whole or in part for contractor's failure to:

(1) Ship/deliver conforming items or provide conforming services within the time specified.

(2) Timely comply with other contract requirements including, e.g., the obligation to provide disposition instruction, repair or replace defective items.

(3) Make progress such that performance of the contract is endangered, provided contractor does not cure such failure within 10 days (or such other period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure.

b. In the event of default, the contracting officer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of, or contract to purchase, goods or services in for those due from contractor. Substitute items need not be identical, or the same or similar, as long as they meet the same general needs of MCX at the time of cover, as determined by the contracting officer.

c. Except as to performance terminated in accordance with the above, contractor is obligated to continue to perform the contract.

d. Time is of the essence in performance of MCX contracts.

30. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS

a. Contractor will not acquire for use in the performance of this contract any merchandise, equipment, supplies or service originating from, processed in, or transported from or through, the countries prohibited from commerce by the U. S. Government. This restriction includes merchandise, equipment, supplies or services from any other country that is restricted by law, regulation, or executive order at any time during performance of the contract. Lists of entities and individuals subject to economic sanctions are included in the Office of Foreign Assets Control's (OFAC), Department of the Treasury, List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

b. Contractor agrees to insert the provision of this clause, including this paragraph, in its subcontracts.

31. AUTOMATIC DATA PROCESSING VIRUS

a. Contractor furnished Automatic Data Processing (ADP) products must be virus free. ADP products includes but is not limited to, firmware (e.g. cash registers, modems, printers, personal and mainframe computers), packaged software programs, software programs tailored for MCX, demonstration diskettes, subscribed data bases, electronic mail, drawings, reports, Electronic Data Interchange systems and maintenance diskettes.

b. Contractor warrants that the ADP products provided have been controlled and protected to avoid virus contamination. This warranty will end ninety calendar days after proper product installation unless contractor changes (modifies, upgrades or provides approved substitutes) the product. If a change occurs, the warranty will end ninety calendar days after such changes are installed on MCX property.

c. If there is evidence reasonably tracing a virus contamination to the product provided under this contract, MCX will notify the contractor. The contractor will be liable for all costs incurred by MCX in removing the virus, correcting damaged ADP products and including labor, repair costs and replacement ADP products.

d. Contractor warrants that all software sold to MCX for retail sales is virus free. Contractor warrants that ADP products have been controlled and protected to avoid virus contamination. If a contractor product is returned to MCX by a customer because of virus contamination, contractor agrees to accept return of the product, regardless of when it was purchased by MCX or shipped by contractor, and to replace it at no cost to MCX or the

customer. Claims against MCX as result of virus contaminated retail products will be handled in accordance with the Hold Harmless and Indemnification clause in this agreement.

32. MCX/VENDOR PARTNERSHIP MARKETING PROGRAM. The MCX Marketing program consists of numerous elements to enhance the sale of consumer products and services. At the contractor's request, MCX will give the contractor the opportunity to participate in selected elements of the Program. All participation will be in conjunction with the sale of authorized products and services to authorized customers. MCX reserves the right to limit the degree of participation based on availability, designated themes of special events, and the overall goals of the program.

33. MCX SELL PRICE. Any reference to MCX sell or retail prices are solely for MCX information and internal purposes and do not constitute an agreement to sell any product at a particular price.

34. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS. By supplying merchandise to MCX, contractor warrants that it has complied with all applicable laws and regulations governing the manufacture, sale, packing, shipment, and delivery of the merchandise. Contractor certifies that it, its subcontractors, and its suppliers have complied with applicable labor laws, including, but not limited to, the Fair Labor standards Act (FLSA). Contractor will notify subcontractors that MCX requires merchandise be made in compliance with the FLSA and will provide subcontractors with information regarding the requirements of FLSA. If requested by the contracting officer, contractor will promptly provide subcontractor names and manufacturing sites. Contractor will have an effective monitoring program for it, and its subcontractors and suppliers, and will display Wage and Hour Division posters in workers' language and other appropriate material, provided by U.S. Department of Labor (DOL) through MCX, at U.S. work sites inviting workers to make inquiries about the Fair Labor Standards Act. Further, the contractor shall be responsible to comply with any and all laws which may from time to time be in effect governing the hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions and other matters pertaining to labor standards of the country, or political matters pertaining to labor standards of the country, or political subdivision thereof, wherein this contract is to be performed.

35. INSURANCE. The Contractor shall maintain, during any contract period, insurance coverage as stated in this contract, with insurance company(ies) acceptable to MR, MCCS, and MCX. Acceptable is defined as a carrier that is A rated by A.M. Best, Inc., or equivalent. All liability insurance coverage will name the United States, NAF Business and Support Services Division (MR), MCCS, and MCX as additional and several insureds for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of Contractor, or Contractor's agents, representatives, or employees. The certificate of insurance will carry an endorsement waiving the Contractor's right to subrogation against the United States, MR, MCCS, and MCX. If not otherwise indicated in the purchase order or contract, Contractor shall maintain, the following types and minimum amounts of insurance; however, in no event shall the coverage be less than the minimum requirements established by applicable state and local regulations and laws for the risk associated with the supplies or services to be provided by the contract:

a. Comprehensive General Liability Insurance

\$1,000,000 per occurrence / \$2,000,000 Total Policy Aggregate
\$1,000,000 Personal Injury/Advertising Injury
\$2,000,000 Products and Completed Operations Aggregate

b. Workers' Compensation and Employer's Liability Insurance. The Contractor shall carry a workers' compensation and employer's liability policy which provides statutory benefits covering all their employees in those states where they are located and working at MCCS or MCX facilities, or in support of MCCS or MCX. Contractor shall maintain the greater of the following types and minimum amounts of insurance:

\$1,000,000 per employee / per claim / per occurrence
\$1,000,000 per claim / per occurrence for occupational illness or disease

c. Automobile Bodily Injury and Property Damage Liability Insurance. The Contractor shall maintain business auto insurance covering all owned, non-owned, and leased vehicles with a combined single limit of \$1,000,000 and a \$2,000,000 aggregate policy limit.

36. PERMITS AND LICENSES. Contractor shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.

37. NON-EXCLUSIVE CONTRACT. Unless specified elsewhere, this contract does not establish Contractor as the sole supplier of goods or services to be provided on this military installation.

38. PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL. If Contractor will access a Marine Corps installation in support of the purchase order or contract, Contractor and any subcontractors are required to comply with applicable MR, MCCS, or MCX identity verification procedures, installation access requirements, and security clearance policies.

39. DRUG-FREE WORK PLACE. To the extent applicable, the Contractor will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

40. INVOICING AND PAYMENT

a. Invoicing Instructions. In order to be considered proper invoices for purposes of the Prompt Payment Act, invoices must be submitted as follows:

(1) Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings.

(2) Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Contracting Officer) and must contain the following minimum information to enable timely payment:

(a) Name of Contractor.

(b) Invoice date. This cannot be a date earlier than the ship date required by the contract or purchase/delivery order. In the event that the invoice date is a date earlier than the required ship date, MR, MCCS, or MCX retains the right either to return the improper invoice to the Contractor for correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, for purposes of prompt payment discounts, will be considered to be the date of receipt of the corrected, proper invoice.

(c) Contract or purchase/delivery order number.

(d) Item description and quantity shipped/delivered.

(e) Contract/order line item cost and total.

(f) Shipping and discount terms, including prompt payment discounts, and special allowance(s) if included in the contract. Prompt payment discounts and special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.

(g) "Ship To" address as shown on order or contract.

(h) Freight charges (on FOB origin shipments).

(i) Name, title and phone number of Contractor's contact person.

(j) Complete "remit to" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless in accordance with paragraph b.(8) below.

(3) Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

b. Payment

(1) A proper invoice is an invoice which contains all of the information/documentation specified in paragraph a.(2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated MR or MCCS paying office. Improper invoices may be returned without payment to the Contractor.

(2) The net payment date for MR, MCCS, and MCX contracts is established at 30 days after receipt of a proper invoice. Discounts for prompt payment, if included in the contract, will be applied as follows:

(a) If the contract or purchase order specifies a prompt payment discount period of less than 30 days, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after receipt of a proper invoice.

(b) If the contract or purchase order specifies a prompt payment discount period of 30 days or more, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after the prompt payment discount period ends.

(c) If the contract fails to specify any prompt payment discount, then net payment will be due 30 days after receipt of a proper invoice.

(3) In the event that a prompt payment discount, or other special discounts or allowances specified on Contractor's invoice are better than that specified in the contract or purchase order, MR, MCCS, or MCX may take the more favorable discounts and/or allowances.

(4) For the purpose of determining whether payment is timely made by MR, MCCS, or MCX a "day" is counted for each calendar day. When payments fall due on Saturday, Sunday or legal Federal holidays, payments made the following business day will not incur late payment interest penalties.

(5) A discount for prompt payment can be taken by MR, MCCS, or MCX if the discounted payment is made within the discount period specified. The prompt payment discount period begins to run on the date of the invoice. Computation of the period for prompt payment discounts begins with the date of invoice; computation for net payment begins with receipt of a proper invoice.

(6) Payment is made:

(a) the date a check for payment is dated.

(b) the date an electronic fund transfer is received, regardless of the date the financial institution posts the transfer.

(c) the date a withholding authorized by the contract is initiated by MR, MCCS, or MCX.

(7) Payment will be made by mailing a check to the address shown on the contract, unless the Contractor provided a different "remit to" address to the Contracting Officer at the time the terms were negotiated or the contract was issued.

(a) If a Contractor wishes to change the address (e.g., street, P.O. box, city/state) to which payment should be sent or wishes its payments to also reflect a factor's name and be sent to the factor's address, the request must be in writing, signed by a responsible official of the Contractor, and submitted to the Contracting Officer. All such requests must clearly establish which division or subsidiary of a corporation such changes apply to and the address which is superseded by the changes. These changes will become effective on the date determined by MR, MCCS, or MCX, normally 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on MR or MCCS for failure to make payment to the new payee/address.

(b) Any request by the Contractor to change the name shown on the contract or to delegate its obligation under the contract must be sent to the Contracting Officer within 30 days of the change.

(8) Any questions or inquiries concerning invoice payments should be directed to the MR, MCCS, or MCX paying office designated on the contract or purchase/delivery order.

(9) Any interest penalties due to Contractors will be computed in accordance with the Prompt Payment Act, 31 U.S.C. 3901-3907, as amended.

41. PRIVACY ACT NOTIFICATION (Jan 2008). If applicable, the Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

42. PRIVACY ACT (Feb 2008)

42.1 The Contractor agrees to:

a. Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies:

(1) The systems of records; and

(2) The design, development, or operation work that the Contractor is to perform;

b. Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

c. Include this clause, including this subparagraph c., in all subcontracts awarded under this contract, which requires the design, development, or operation of such a system of records.

42.2 In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development or operation of a system of

records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individual's to accomplish an agency function. For purposes of the Act, when the contract is for operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

42.3 a. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use and dissemination of records.

b. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

c. "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

42.4 Contractor shall comply with the following requirements:

a. Privacy Act Data shall not be stored on any mobile storage device (i.e. laptops, thumb drives, portable hard drives, etc.).

b. If transmitting Privacy Act Data, files will be encrypted and password protected or sent via secure file transfer protocol (FTP).

c. If used for analysis, the use of unique identifiers or dummy data will be substituted whenever practical.

d. Complete annual Personally Identifiable Information training and provide certificates of completion to Contracting Officer. The on-line training may be accessed at http://iase.disa.mil/eta/pii/pii_module/pii_module/index.html