**Special Provision-Progress Payments based on Cost**

The use of Progress Payments based on Cost (hereinafter referred to as payment) requires retention to be withheld from each invoice in the amount of 10%.. Each payment shall be cost limited and each payment requested will be paid the lesser of the amount of the payment reflected in the payment plan or the amount of the cost incurred plus 5%.

This special provision is extended by the Buyer as a privilege and should not be construed as a right of Seller. This special provision is intended to limit the financial exposure of the Seller, during the manufacturing, testing and delivery of the contract products. This special provision applies even though the Seller has not made delivery of said contract products to the Buyer nor completed the work required on the contract products with respect thereto.

The general guidelines and definitions along with additional special provisions applicable to the purchase order, are presented below.

**Progress Payments Based on Cost**

**Definition**: Payment is made based upon the progress of the manufacturing, testing and delivery of the contract product(s) and the cost incurred.

**Guidelines:**

 **A. Establishing payment plan:**

* Seller must possess an accounting system and controls for proper administration of progress payments. Seller should provide evidence of any recent Government Audit as support with the proposal. A Subcontract Administrator/Procurement Analyst pre-award audit may be necessary as determined by the Subcontract Administrator/Procurement Analyst.
* The payment plan will identify key performance events and the estimated cost value (either in dollars or percentages) of each event.

 **B. Payments:**

* Seller shall execute and provide the certification, on page 4 and 5 of this special provision, with each invoice.

**Additional Provisions**

**Invoice** - Except as provided below with respect to pension, profit sharing, and employee stock ownership plan contributions, the term “costs” shall include only those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, interdivisional notices of payment, or other form of actual payment for items or services purchased directly for the contract, together with costs incurred (when Seller is not delinquent in payment of costs of contract performance in the ordinary course of business), but not necessarily paid, for materials that have been issued from Seller's stores inventory and placed in the production process for use on this purchase order, for direct labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by Seller for purposes of obtaining reimbursement under this purchase order plus the amount of progress payments that have been paid to Seller's subcontractors under similar cost standards.

In addition, when the aforementioned contributions are paid by Seller to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs thereof shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals thereof may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than semi‑monthly and the requirement of prior payment for items or services purchased directly for the contract shall not apply where the seller is a small business concern.

**Reduction or Suspension of Payments** - Buyer may reduce or suspend progress payments whenever Buyer finds that Seller has failed to comply with any material requirement of this purchase order; has so failed to make progress, or is in such unsatisfactory financial condition as to endanger performance of this purchase order; has allocated inventory to this purchase order substantially exceeding reasonable requirements; is delinquent in payment of the costs of performance of this purchase order in the ordinary course of business; does not have costs that are commensurate with the amount paid against this purchase order.

**Insurance** – In addition to any other insurance requirements invoked in this Order, a certificate of property insurance will be required to be submitted to the cognizant Subcontract Administrator/ Procurement Analyst no later than 30 days after issuance of this Order or 15 days prior to any payment. Additionally, the insurance certificate shall be reviewed and approved by the Subcontract Administrator/Procurement Analyst and Buyer Risk Management.  The insurance certificate shall be sent to Buyer by the insurance agent and not by Seller; the intent is to ensure that the certificate is valid and that the insuring agency is aware of how to contact Buyer in the future should the certificate be cancelled for any reason.  Should Buyer not receive the certificate of property insurance within 30 days after issuance of this Order, Seller will not be paid for any invoices related to this Order and payments may also be suspended on any other purchase orders issued to Seller until the insurance provisions have been satisfied.

Seller agrees to keep all Contract Products insured until delivery of said products to Buyer. Insurance on the contract products shall be, at a minimum, the amount of the total purchase order price, including all changes. Said insurance policy or policies shall be delivered to the Subcontract Administrator/Procurement Analyst and shall state that all losses thereunder shall be paid to the Government and/or Buyer, or order for distribution to the Government, Buyer, and Seller as their respective interests shall appear.

The insurance certificate, provided by the insurance agent, shall include, at a minimum, the purchase order number, coverage dollar amount, effective dates of coverage, policy number, Buyer and the U.S. Government listed as loss payees, and a written 30-day notice of cancellation on the certificate insurance certificate shall also state that the seller agrees to a waiver of subrogation. Failure to furnish such insurance policy or policies shall constitute failure to perform a provision of this Order for which this Order will be terminated.

Seller agrees to defend, indemnify and hold harmless Buyer, and all agents and associates thereof from any loss or damage to the Contract Products from any and all causes, including but not limited to theft, transportation hazards, vandalism, fire, wind, water, and lightening, until the Contract Products are delivered to Buyer in accordance with the terms of this purchase order or at a place designated by the Subcontract Administrator/Procurement Analyst.

Seller will furnish insurance for transit coverage if shipment is arranged by Seller or F.O.B. Ingalls Shipbuilding. Should Seller be underinsured for any reason whatsoever, Seller shall hold Buyer harmless in regards to any type of cost recovery by Seller, regardless of the type of contract issued by Buyer to Seller.

**Backcharges** - If upon being notified by Buyer of deficient work or materials, and having been directed to correct the deficient work or materials by a specific date consistent with the current project schedule, Seller states or by its actions/inactions indicates its inability or unwillingness to comply, then Buyer shall proceed to accomplish the work by the most expeditious means available to it and to backcharge Seller for the cost of the required work. The parties agree that such cost shall be established at the Buyer’s fully-burdened production or engineering hourly rate (as appropriate) utilizing the then current Government-approved rate set authorized for change-order activity. In addition, Buyer may set-off any amount(s) due from Seller to Buyer, liquidated or un-liquidated, against payments due to Seller under this or any other Order.

**Progress Payment based on Cost Request & Certification**

**(Page 1 of 2)**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Purchase Order No.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Invoice No.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Suppliers Contract No.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Supplier Name

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Buyer Name

1. Base Purchase Order: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Change Order(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Total Purchase Order Value: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Percentage Complete: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Enter percentage from billing plan)
5. Gross Dollar Progress: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Multiply line (4) times line (3))
6. Retention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (10% until line (4) reaches 50% and then 5%)
7. Net Progress: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Subtract line (6) from line (5))
8. Total Cost: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Total cost to date multiplied by 105%)
9. Payments Previously Invoiced: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Gross amount billed prior to this invoice)
10. Amount Due this Invoice: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Subtract (9) from the lower of lines (7) and line (8)

I certify to the best of my knowledge and belief that-

* The above statement (with attachments) has been prepared from the books and records of the above-named supplier in accordance with the contract and the instructions hereon, and to the best of my knowledge and belief, that it is correct;
* All the costs of contract performance (except as listed below) have been paid to the extent shown herein, or where not shown as paid have been paid or will be paid currently, by the contractor, when due, in the ordinary course of business;
* The work reflected above has been performed;
* The quantities and amounts involved are consistent with the requirements of the contract;

 \_\_\_\_\_\_\_ Initial

 **(Page 2 of 2)**

**(Continued)** I certify to the best of my knowledge and belief that**-**

* There are no encumbrances (except as listed below, or on previous progress payment request number \_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair Ingalls or the Government's title;
* There has been no materially adverse change in the financial condition of the supplier since receipt of this award;
* To the extent of any contract provision limiting progress payments pending first article approval, such provision has been complied with, and
* After the making of the requested progress payment the unliquidated progress payments will not exceed the maximum unliquidated progress payments permitted by the contract.

Exceptions from above:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We hereby certify that the amount stipulated on this invoice does not exceed the total cost incurred to date of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Supplier:

By: Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_

Subscribed and sworn to me before me, this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

Notary Public:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 SEAL