

SUBCONTRACT/PURCHASE ORDER TERMS & CONDITIONS Number 7.4.2.6.a.6

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order, or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "AdvaTech/Butler Tool" means **Butler Tool & Design, Inc. and/or AdvaTech Manufacturing division of Butler Tool & Design, Inc.**, acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of AdvaTech/Butler Tool is identified on the face of the Contract than "AdvaTech/Butler Tool" means that subsidiary, or affiliate.
- (c) "AdvaTech/Butler Tool Procurement Representative" means a person authorized by AdvaTech/Butler Tool's cognizant procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "Seller" means the Party identified on the face of the Contract with whom AdvaTech/Butler Tool is contracting, including any and all sub-tier suppliers where applicable.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract and agreement to flow-down the terms and conditions in including key characteristics here-in to all sub-tier suppliers.
- (c) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby objected to by AdvaTech/Butler Tool and have no effect unless expressly accepted in writing by AdvaTech/Butler Tool.
- (d) Seller agrees to indemnify, save harmless and defend AdvaTech/Butler Tool and its directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's breach of any of its duties addressed in this Contract. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Contract.
- (e) Seller warrants that the price for the Work sold to AdvaTech/Butler Tool under this Contract is no less favorable than that extended during the term of this order to any other customer for the same or like items in equal or lesser quantities on similar terms and conditions.

3. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the law of the State in which the AdvaTech/Butler Tool business is located from which this Contract is issued, excluding its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- (b) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to AdvaTech/Butler Tool hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (c) Seller shall provide to AdvaTech/Butler Tool with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

4. COMPLIANCE WITH LAWS

- (a) Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances.

(b) The parties recognize that some or all of the Work that is the subject of this Contract may be used to satisfy requirements in furtherance of AdvaTech/Butler Tool' performance under a U.S. Federal Government prime or sub -contract. Accordingly, Seller agrees that in that instance, it shall be bound by the following Federal Acquisition Regulation ("FAR") clauses:

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) (3).
- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a);
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631)

(c) By submitting its written offer, or providing oral offers or quotations at AdvaTech/Butler Tool' request, or accepting this Contract, including oral orders from AdvaTech/Butler Tool, Seller certifies that to the best of its knowledge and belief, that Seller and/or any of its Principals (as defined in FAR 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any U.S. Federal Government Agency. Seller shall provide immediate written notice to AdvaTech/Butler Tool if at any time it learns that its certification was erroneous or has become erroneous by reason of changed circumstances.

- (d) Additional clauses specific to the performance of a given U.S. Government prime or subcontract, if any, are provided as an Attachment to this Contract and deemed incorporated herein.

5. **ASSIGNMENT**

Any assignment or subcontracting of Seller's contract rights or delegation of duties shall be void, unless prior written consent is given by AdvaTech/Butler Tool. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if AdvaTech/Butler Tool is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of AdvaTech/Butler Tool against Seller. AdvaTech/Butler Tool shall have the right to make settlements and/or adjustments in price without notice to the assignee.

6. **CHANGES**

- (a) The AdvaTech/Butler Tool Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance (i.e., hours of the day, days of the week, etc.). Changes may only be made in writing by the AdvaTech/Butler Tool Procurement Representative.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, AdvaTech/Butler Tool shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to AdvaTech/Butler Tool within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. AdvaTech/Butler Tool may audit any of Seller's books and records in connection with any equitable adjustment proposal.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.
- (e) Seller shall notify AdvaTech/Butler Tool in writing of any changes, initiated by Seller, to the material, dimensions, method or process of manufacture, form, fit, and/or function of the Work furnished under this Contract and/or any discrepancies, omissions, and/or needed clarifications are discovered or suspected which may affect the Work to be delivered by Seller. Where required, Seller agrees to obtain written approval by AdvaTech/Butler Tool prior to making such changes. Notwithstanding the above or any other provisions of this Contract, the Seller agrees that no changes to the items which may be required in order to meet the specified performance requirements of this Contract shall entitle the Seller to any adjustment in either price or delivery.

7. **CONTRACT DIRECTION**

- (a) Only the AdvaTech/Butler Tool Procurement Representative has authority to change this Contract. Such changes must be in writing.
- (b) AdvaTech/Butler Tool engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the AdvaTech/Butler Tool Procurement Representative.

8. **DEFAULT**

- (a) AdvaTech/Butler Tool, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have five (5) days (or such longer period as AdvaTech/Butler Tool may authorize in writing) to cure any such failure after receipt of notice from AdvaTech/Butler Tool. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) If Seller enters into any proceeding relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors and/or becomes insolvent or suspends any of its operations, Seller shall give written notice to AdvaTech/Butler Tool within five (5) days of the initiation of proceedings.
- (c) AdvaTech/Butler Tool shall not be liable for any Work not accepted; however, AdvaTech/Butler Tool may require Seller to deliver to AdvaTech/Butler Tool any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. AdvaTech/Butler Tool and Seller shall agree on the amount of payment for these other deliverables.
- (d) In the event of termination, in whole or in part, AdvaTech/Butler Tool may acquire, under terms AdvaTech/Butler Tool considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to AdvaTech/Butler Tool for any excess costs of those supplies or services, including any incidental costs AdvaTech/Butler Tool incurs through reprocurement.
- (e) Seller shall continue all Work not terminated.
- (f) If after termination under paragraph (a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

9. **DISPUTES**

All disputes under this Contract which are not disposed of by mutual agreement may be settled at AdvaTech/Butler Tool's sole discretion either by submitting the claim to (i) a court of competent jurisdiction or (ii) binding arbitration, before a single arbitrator, in the state and under the laws of the state from which this Contract is issued, in accordance with the Commercial Arbitration Rules of the American Arbitration Association; and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by AdvaTech/Butler Tool.

10. **EXPORT/IMPORT CONTROL**

- (a) Seller agrees to comply with all applicable export and import control laws and regulations of Seller's country and of the United States, and with all applicable export or import authorizations and their provisos. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an Export License or applicable license exemption or exception.
- (b) Seller agrees to notify AdvaTech/Butler Tool of the US Munitions List Classification or US Export Commodity Classification Number of each deliverable under this Contract.
- (c) Seller shall provide to AdvaTech/Butler Tool all information necessary to support any export or import authorization requirements by AdvaTech/Butler Tool for items ordered hereunder.
- (d) Seller shall immediately notify the AdvaTech/Butler Tool Procurement Representative if Seller is listed in any Denied

Parties List, has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR §120.27, is ineligible to contract with, or to receive a license or other approval to export or import articles or services, from any agency of the U.S. Government, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U. S. Government entity or agency.

(d) Seller shall indemnify AdvaTech/Butler Tool for all liabilities, penalties, losses, damages, costs or expenses, including attorney fees, that may be imposed on or incurred by AdvaTech/Butler Tool in connection with any violations of such law and regulations by Seller.

(f) Seller acknowledges that if it engages in the United States in the business of either manufacturing or exporting defense articles or defense services, as defined in 22 CFR §§120.6, 120.9, then Seller is required to register with the U.S. Department of State, Office of Defense Trade Controls.

11. **EXTRAS**

Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

12. **PROPERTY**

(a) AdvaTech/Butler Tool may provide to Seller property owned by either AdvaTech/Butler Tool or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in AdvaTech/Butler Tool or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify AdvaTech/Butler Tool of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At AdvaTech/Butler Tool' request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by AdvaTech/Butler Tool.

(e) Material made in accordance with AdvaTech/Butler Tool specifications and drawings shall not be furnished or quoted to any other person or concern without AdvaTech/Butler Tool's written consent.

(f) Any invention or similar intellectual property first made or conceived by Seller in the performance of this Contract or which is derived from or based on the use of confidential information supplied by AdvaTech/Butler Tool shall be considered as being a "work made for hire" and shall be and become the property of AdvaTech/Butler Tool; and Seller shall execute such documents necessary to perfect AdvaTech/Butler Tool' title thereto.

13. **GRATUITIES/KICKBACKS**

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of AdvaTech/Butler Tool with a view toward securing favorable treatment as a supplier.

14. **INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to AdvaTech/Butler Tool.

(b) Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

15. **INFORMATION OF ADVATECH/BUTLER TOOL**

Information, including but not limited to technical and business information, provided by AdvaTech/Butler Tool to Seller remains the property of AdvaTech/Butler Tool. The Parties agree that, in the course of performance hereunder, it may be necessary and desirable for AdvaTech/Butler Tool to provide Seller proprietary information. Any proprietary information provided by AdvaTech/Butler Tool to Seller shall identify such information as proprietary when disclosing it. The Seller shall not disclose proprietary information of AdvaTech/Butler Tool to any person outside its employ, except when authorized by AdvaTech/Butler Tool. Seller shall maintain such information in confidence in the same manner it protects its own proprietary information and shall use it only for the performance of this Order, and for no other purpose. Seller agrees to comply with the terms of this Section 15 and to comply with all Proprietary Information markings and Restrictive Legends applied by AdvaTech/Butler Tool to anything provided hereunder to Seller.

16. **INFORMATION OF SELLER**

Seller shall not provide any proprietary information to AdvaTech/Butler Tool without prior execution by AdvaTech/Butler Tool of a Proprietary Information Agreement or amendment to this Contract providing for the same.

17. **INSPECTION AND ACCEPTANCE**

(a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, AdvaTech/Butler Tool and/or its customer or authorities may inspect all facilities, Work, books, records and data prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before or after shipment. Seller shall provide access to all information, facilities, and all assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. AdvaTech/Butler Tool' final inspection and acceptance shall be at destination unless otherwise designated by AdvaTech/Butler Tool.

(c) Seller shall provide and maintain a test and inspection system acceptable to AdvaTech/Butler Tool and its customers, if required.

(d) If Seller delivers non-conforming Work, AdvaTech/Butler Tool may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements. Seller shall be liable to AdvaTech/Butler Tool for any cost AdvaTech/Butler Tool incurred to ensure such compliance. Prior to shipping any non-conforming Work, Seller shall contact AdvaTech/Butler Tool and provide notification of the nature and scope of the non-conformance and receive written approval by AdvaTech/Butler Tool for said shipment of non-conforming product.

(e) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

18. **INSURANCE/INDEMNIFICATION**

(a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of AdvaTech/Butler Tool or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such

other insurance as AdvaTech/Butler Tool may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall indemnify and hold harmless AdvaTech/Butler Tool, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors. Seller shall provide AdvaTech/Butler Tool thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name AdvaTech/Butler Tool as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of AdvaTech/Butler Tool and is not contributory with any insurance which AdvaTech/Butler Tool may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier.

(b) Seller shall without limitation as to time indemnify and save AdvaTech/Butler Tool harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's compensation or Occupational Disease laws and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by AdvaTech/Butler Tool negligence.

(c) Seller does hereby irrevocably indemnify and agree to defend any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design or manufacturing defect, negligence, failure to warn, or breach of warranty related to Seller's product(s) (including parts and components thereof purchased by Seller from its suppliers), delivered to AdvaTech/Butler Tool, or breach of, or non-compliance with, any provision of this Contract.

(d) Seller warrants materials furnished pursuant to this Contract shall be free from asbestos containing materials.

19. **INTELLECTUAL PROPERTY**

Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

(a) Seller agrees that AdvaTech/Butler Tool shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to AdvaTech/Butler Tool, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at AdvaTech/Butler Tool' request and expense, all documentation necessary to perfect title therein in AdvaTech/Butler Tool. Seller agrees that it will maintain and disclose to AdvaTech/Butler Tool written records of, and otherwise provide AdvaTech/Butler Tool with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of AdvaTech/Butler Tool and subject to the protection provisions of the clause entitled "Information of AdvaTech/Butler Tool". Seller agrees to assist AdvaTech/Butler Tool, at AdvaTech/Butler Tool' request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the

intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless AdvaTech/Butler Tool and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

20. **NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

21. **OFFSET CREDIT/COOPERATION**

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of AdvaTech/Butler Tool. Seller agrees to cooperate with AdvaTech/Butler Tool in the fulfillment of any foreign offset/countertrade obligations.

22. **PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the AdvaTech/Butler Tool Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be FOB Place of Shipment.

23. **PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) AdvaTech/Butler Tool' receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. AdvaTech/Butler Tool shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.

(b) Payment shall be deemed to have been made as of the date of mailing AdvaTech/Butler Tool' payment or electronic funds transfer.

(c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

24. **PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Statement of Work.

25. **QUALITY CONTROL SYSTEM**

(a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by Seller shall be kept complete and available to AdvaTech/Butler Tool and its customers.

26. **RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the

subject matter hereof, will be made by Seller and/or its subcontractors/suppliers without the prior written approval of AdvaTech/Butler Tool.

27. **SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

28. **STOP WORK ORDER**

(a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from AdvaTech/Butler Tool, or for such longer period of time as the Parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.

(b) Within such period, AdvaTech/Butler Tool shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause, shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

29. **SURVIVABILITY**

If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:

Applicable Laws
Export/Import Control
Independent Contractor Relationship
Information of AdvaTech/Butler Tool
Insurance/Indemnification
Intellectual Property
Release of Information
Warranty

30. **TERMINATION FOR CONVENIENCE**

(a) For specially performed Work: AdvaTech/Butler Tool may terminate part, or all, of this Contract for its convenience by giving written notice to Seller. AdvaTech/Butler Tool's only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of AdvaTech/Butler Tool, using generally accepted accounting principles, have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. AdvaTech/Butler Tool may audit any of Seller's books and records in connection with any termination claim.

(b) In no event shall AdvaTech/Butler Tool be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

(c) For other than specially performed Work: AdvaTech/Butler Tool may terminate part or all of this Contract for its convenience by giving written notice to Seller and AdvaTech/Butler Tool's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.

(d) In either case, Seller shall continue all Work not terminated.

31. **TIMELY PERFORMANCE**

(a) Seller's timely performance is a critical element of this Contract. Time is of the essence.

(b) Unless advance shipment has been authorized in writing by AdvaTech/Butler Tool, AdvaTech/Butler Tool may store at

Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify AdvaTech/Butler Tool, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by AdvaTech/Butler Tool.

32. **WAIVER, APPROVAL, AND REMEDIES**

(a) Failure by AdvaTech/Butler Tool to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of AdvaTech/Butler Tool thereafter to enforce each and every such provision(s).

(b) AdvaTech/Butler Tool's approval of documents shall not relieve Seller from complying with any requirements of this Contract.

(c) The rights and remedies of AdvaTech/Butler Tool in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

33. **LIMITATION OF LIABILITY**

AdvaTech/Butler Tool shall not be liable for any indirect damages including incidental, consequential, punitive, or exemplary damages, or lost profits.

34. **WARRANTY**

Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. Seller further warrants and implies that the Work performed hereunder is merchantable and fit for use for the particular purpose described in this Contract. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or one (1) year, whichever is longer, if Seller is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the Seller is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, Seller, at AdvaTech/Butler Tool's option, shall promptly repair, replace, or reperform the Work and hold AdvaTech/Butler Tool harmless from any loss, damage or expense that AdvaTech/Butler Tool may suffer from the breach of this warranty. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. If repair or replacement or reperformance of Work is not timely, AdvaTech/Butler Tool may elect to return the non-conforming Work or repair or replace Work or reprocur the Work at Seller's expense. All warranties shall run to AdvaTech/Butler Tool and its customers. At all times during the performance of this Contract, AdvaTech/Butler Tool shall have the right to inspect Work performed by Seller.