



PROGRESS PAYMENTS

The Company will make progress payments to the Seller when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Procurement Representative, under the following conditions:

(a) Computation of Amounts.

- (1) Unless the Seller requests a smaller amount, the Company will compute each progress payment as 85% for Small Business Concerns or 80% for Large Business Concerns of the Seller's total costs incurred under this Agreement whether or not actually paid, plus financing payments to lower-tier subcontractors (see paragraph (j) of this UCN-22384, Progress Payments), less the sum of all previous progress payments made by the Company under this Agreement. The Company will consider cost of money that would be allowable under Federal Acquisition Regulation (FAR) 31.205-10 as an incurred cost for progress payment purposes.
- (2) The amount of financing and other payments for supplies and services purchased directly for this Agreement are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to lower-tier subcontractors-
 - (i) In accordance with the terms and conditions of a subcontract or invoice; and
 - (ii) Ordinarily within 30 days of the submission of the Seller's payment request to the Company.
- (3) The Company will exclude accrued costs of Seller contributions under employee pension plans until actually paid unless-
 - (i) The Seller's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid must be excluded from the Seller's total costs for progress payments until paid).
- (4) The Seller will not include the following in total costs for progress payment purposes in paragraph (a)(1) of this UCN-22384, Progress Payments:
 - (i) Costs that are not reasonable, allocable to this Agreement, and consistent with sound and generally accepted accounting principles and practices.
 - (ii) Costs incurred by lower-tier subcontractors or lower-tier suppliers.
 - (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
 - (iv) Payments made or amounts payable to lower-tier subcontractors or lower-tier suppliers, except for-
 - (A) Completed work, including partial deliveries, to which the Seller has acquired title; and
 - (B) Work under cost-reimbursement or time-and-material subcontracts to which the Seller has acquired title.
- (5) The amount of unliquidated progress payments may exceed neither:
 - (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to lower-tier subcontractors) nor
 - (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work will be considered to be the supplies and services required by this Agreement, for which delivery and invoicing by the Seller and acceptance by the Company are incomplete.



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- (6) The total amount of progress payments must not exceed 85% for Small Business Concerns or 80% for Large Business Concerns of the total subcontract price.
- (7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this UCN-22384, Progress Payments, the Seller must repay the amount of such excess to the Company on demand.
- (8) Notwithstanding any other terms of this Agreement, the Seller agrees not to request progress payments in dollar amounts of less than \$2,500. The Company may make exceptions.
- (9) The costs applicable to items delivered, invoiced, and accepted must not include costs in excess of the Agreement price of the items.

(b) Liquidation.

Except as provided in the Article Termination for Convenience of Company's General Terms & Conditions, all progress payments will be liquidated by deducting from any payment under this Agreement, other than advance or progress payments, the unliquidated progress payments, or 85% for Small Business Concerns or 80% for Large Business Concerns, of the amount invoiced, whichever is less. The Seller must repay to the Company amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Company reserves the right to unilaterally change to an alternate liquidation rate when deemed appropriate for proper subcontract financing.

(c) Reduction or Suspension.

The Company may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding, on substantial evidence, any of the following conditions:

- (1) The Seller failed to comply with any material requirement of this Agreement (which includes paragraphs (f) and (g) of this UCN-22384, Progress Payments).
- (2) Performance of this Agreement is endangered by the Seller's-
 - (i) Failure to make progress; or
 - (ii) Unsatisfactory financial condition.
- (3) Inventory allocated to this Agreement substantially exceeds reasonable requirements.
- (4) The Seller is delinquent in payment of the costs of performing this Agreement in the ordinary course of business.
- (5) The fair value of the undelivered work under this Agreement is less than the amount of unliquidated progress payments for that work.
- (6) The Seller is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this UCN-22384, Progress Payments, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this UCN-22384, Progress Payments.

(d) Title.

- (1) Title to the property described in this paragraph (d) will vest in the Government. Vestiture will be immediately upon the date of this Agreement, for property acquired or produced before that date. Otherwise, vestiture will occur when the property is or should have been allocable or properly chargeable to this Agreement.
- (2) "Property," as used in this UCN-22384, Progress Payments, includes all of the below-described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this Agreement under sound and generally accepted accounting principles and practices-



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- (i) Parts, materials, inventories, and work in process;
 - (ii) Special tooling and special test equipment to which the Government is to acquire title;
 - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this UCN-22384, Progress Payments; and
 - (iv) Drawings and technical data, to the extent the Seller or subcontractors are required to deliver them under this Agreement.
- (3) Although title to property is in the Government under this UCN-22384, Progress Payments, the other applicable clauses of this Agreement will determine the handling and disposition of the property.
- (4) To acquire for its own use or dispose of property to which title is vested in the Government under this UCN-22384, Progress Payments, the Seller must obtain the Company's advance approval of the action and the terms. The Seller will-
- (i) exclude the allocable costs to the property from the cost of performance of the Agreement; and
 - (ii) repay, but cash or credit memorandum, any amount of unliquidated progress payments allocable to the property.
- (5) When the Seller completes all the obligations under this Agreement, including liquidation of all progress payments, title will vest in the Seller for all property (or the proceeds thereof) not-
- (i) Delivered to, and accepted by, the Government under this Agreement; or
 - (ii) Incorporated in supplies delivered to, and accepted by, the Government under this Agreement and to which title is vested in the Government under this UCN-22384, Progress Payments.
- (6) The terms of this Agreement concerning liability for Government-furnished property will not apply to property to which the Government acquired title solely under this UCN-22384, Progress Payments.

(e) Risk of Loss.

Before delivery to and acceptance by the Company, the Seller will bear the risk of loss for property, the title to which vests in the Government under this UCN-22384, Progress Payments, except to the extent the Company expressly assumes the risk. The Seller will repay the Company an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) Control of Costs and Property.

The Seller must maintain an accounting system and controls adequate for the proper administration of this UCN-22384, Progress Payments.

(g) Reports and Access to Records.

- (1) The Seller will promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Procurement Representative for the administration of this UCN-22384, Progress Payments. Also, the Seller will give the Company reasonable opportunity to examine and verify the Seller's books, records, and accounts.
- (2) The Seller will furnish estimates to complete that have been developed or updated within six (6) months of the progress payment request. The estimates to complete must represent the Seller's best estimate of total costs to complete all remaining work required under the Agreement. The estimates must include sufficient detail to permit Company verification.



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(h) Special Terms Regarding Default.

If this Agreement is terminated for default, then:

- (1) the Seller will, on demand, repay to the Company the amount of unliquidated progress payments and
- (2) title will vest in the Seller, on full liquidation of progress payments, for all property for which the Company elects not to require delivery under the terms of this Agreement.

The Company will be liable for no payment except as provided by the article governing a default termination of this Agreement.

(i) Reservation of Rights.

(1) No payment or vesting of title under this UCN-22384, Progress Payments will-

- (i) Excuse the Seller from performance of obligations under this Agreement; or
- (ii) Constitute a waiver of any of the rights or remedies of the parties under this Agreement.

(2) The Company's rights and remedies under this UCN-22384, Progress Payments-

- (i) Will not be exclusive but rather will be in addition to any other rights and remedies provided by law or this Agreement; and
- (ii) Will not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor will such exercise or any single exercise preclude or impair any further exercise under this UCN-22384, Progress Payments or the exercise of any other right, power, or privilege of the Company.

(j) Financing Payments to Subcontractors.

The financing payments to lower-tier subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this UCN-22384, Progress Payments will be all financing payments to lower-tier subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to-

- (i) The unliquidated remainder of financing payments made; plus
- (ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery; or, if the lower-tier subcontractor is a small business concern, four (4) months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments-

- (i) Are substantially similar to the terms of this UCN-22384, Progress Payments;
- (ii) Are at least as favorable to the Company as the terms of this UCN-22384, Progress Payments;
- (iii) Are not more favorable to the lower-tier subcontractor or division than the terms of this UCN-22384, Progress Payments are to the Seller;
- (iv) Are in conformance with the requirements of FAR 32.504(e); and



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- (v) Subordinate all subcontractor rights concerning property to which the Government has title under this Agreement to the Company's right to require delivery of the property to the Company if-
 - (A) The Seller defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (4) If the financing payments are in the form of performance-based payments, the terms of the lower-tier subcontract or interdivisional order concerning payments-
 - (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;
 - (ii) Are in conformance with the requirements of FAR 32.504(f); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under this Agreement to the Company's right to require delivery of the property to the Company if;
 - (A) The Seller defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the lower-tier subcontract or interdivisional order concerning payments-
 - (i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;
 - (ii) Are in conformance with the requirements of FAR 32.504(g); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under this Agreement to the Company's right to require delivery of the property to the Company if;
 - (A) The Seller defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the lower-tier subcontract is 85% for Small Business Concerns or 80% for Large Business Concerns.
- (7) Concerning any proceeds received by the Company for property to which title has vested in the Government under this Agreement, the parties agree that the proceeds will be applied to reducing any unliquidated financing payments by the Company to the Seller under this Agreement.
- (8) If no unliquidated financing payments to the Seller remain, but there are unliquidated financing payments that the Seller has made to any lower-tier subcontractor, the Seller will be subrogated to all the rights the Company obtained through the terms required by this UCN-22384, Progress Payments, to be in any subcontract, as if all such rights had been assigned and transferred to the Seller.
- (9) To facilitate small business participation in subcontracting under this Agreement, the Seller will provide financing payments to Small Business Concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Seller will not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.



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(k) Limitations on Unfinalized Subcontract Actions.

Notwithstanding any other progress payment provisions in this Agreement, progress payments may not exceed 85% for Small Business Concerns or 80% for Large Business Concerns of costs incurred on work accomplished under unfinalized subcontract actions. A “subcontract action” is any action resulting in a subcontract, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as subcontract modifications issued pursuant to the Article Changes in Company’s General Terms & Conditions of this Agreement, or funding and other administrative changes. This limitation will apply to the costs incurred, as computed in accordance with paragraph (a) of this UCN-22384, Progress Payments, and will remain in effect until the subcontract action is finalized. Costs incurred which are subject to this limitation will be segregated on Seller progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this UCN-22384, Progress Payments, progress payments for unfinalized subcontract actions will be liquidated at 85% for Small Business Concerns and 80% for Large Business Concerns, of the amount invoiced for work performed under the unfinalized subcontract action as long as the subcontract action remains unfinalized. The amount of unliquidated progress payments for unfinalized subcontract actions will not exceed 85% for Small Business Concerns or 80% for Large Business Concerns of the maximum liability of the Company under the unfinalized subcontract action or such lower limit specified elsewhere in this Agreement. Separate limits may be specified for separate actions.

(l) Progress Payments Under Indefinite-Delivery Subcontracts.

The Seller will account for and submit progress payment requests under individual orders as if the order constituted a separate subcontract, unless otherwise specified in this subcontract. Notwithstanding the foregoing, if the Seller is not a Small Business Concern, and progress payments are authorized under an indefinite-delivery agreement or basic ordering agreement, then the provisions of this UCN-22384, Progress Payments will not be applicable to individual orders at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of the individual order award.

(End of clause)