

# Purchase Order Terms and Conditions

As appears on the back of Elbit Systems Group's Israeli Entities Purchase Order

December 2020

## ▶ Table of Contents (Hyper-linked)

1) GENERAL.....	2
2) DEFINITIONS.....	2
3) SPECIFICATION OF SUPPLIES.....	2
4) FACILITIES AND SPECIAL EQUIPMENT .....	3
5) BUYER FURNISHED PROPERTY AND/OR MATERIALS .....	3
6) PACKING, MARKING AND SHIPPING.....	4
7) INVOICES AND SHIPPING DOCUMENTS.....	4
8) INSPECTION AND TESTING .....	6
9) CHANGES .....	7
10) DELIVERY.....	7
11) WARRANTIES.....	8
12) INTELLECTUAL PROPERTY INDEMNIFICATION .....	8
13) PROPRIETARY RIGHTS, RIGHTS IN DATA AND CONFIDENTIALITY .....	9
14) STOP WORK ORDER.....	10
15) TERMINATION .....	11
16) PRICES.....	12
17) PAYMENT TERMS .....	12
18) INDEMNITY .....	12
19) ASSIGNMENT.....	12
20) TAXES.....	12
21) EXPORT / IMPORT AUTHORIZATIONS .....	13
22) PRODUCT DISCONTINUANCE NOTIFICATION.....	13
23) DISPUTES.....	13
24) GOVERNING LAW .....	13
25) CODE OF CONDUCT .....	14
26) PROHIBITED SOFTWARE.....	14
27) COUNTERFEIT MATERIEL PREVENTION .....	15
28) CYBER SECURITY INCIDENT REPORTING .....	16
29) MISCELLANEOUS .....	17
30) OFFSET.....	17
31) SURVIVAL .....	18
32) U.S GOVERNMENT CLAUSES.....	18
33) NOTICES.....	18
USG ANNEX .....	19

## 1) ► General

- a) This Order is placed, subject only to the terms and conditions included herein and any statement of work, plans, specifications, and other documents, to the extent the same are incorporated by reference on the face of this Order. The reference to any proposal from Seller (if any), is only for the purpose of specifying basic information concerning price, the description of the Supplies, quantities, terms of payment and delivery and then, only as such terms are consistent with the terms and conditions herein.
- b) In the event of contradiction between these general terms and conditions and specific provisions on the face of the Order, or specific agreement between the parties, the specific provisions shall prevail.
- c) Any of Seller's terms and conditions which are in addition to or are construed as proposals for addition to this Order will not be binding unless agreed to in writing by the Buyer and appear on the Order or in its referenced attachment. Seller's commencement of performance under this Order, or Seller's signed acknowledgement or acceptance of any payment for the Supplies or any part thereof, constitute Seller's acceptance of this Order's terms and conditions.

## 2) ► Definitions

- a) **'Buyer'**- the company specified on the purchase order.
- b) **'Seller'**- the person, firm or company to whom the order is addressed.
- c) **'Order'**- the purchase orders to which these terms and conditions are attached, including any other attachments.
- d) **'Supplies'**- the materials, services or products purchased hereunder, as described on the face of this Order.

## 3) ► Specification of Supplies

Supplies are to be supplied complete in all respects in accordance with the Order and in compliance with any applicable standards. The Buyer may refuse to accept any Supplies delivered which are not in accordance with original specifications or modified specifications agreed between the Buyer and the Seller in writing or not in compliance with the applicable standards or manufactured from materials not in compliance with applicable standards. In such case, Buyer shall have the right to return the goods or withhold payment for same. Notwithstanding the above, Buyer may request Seller to promptly replace such Supplies, if necessary, by the most expeditious manner, to Supplies conforming to the proper and agreed specifications and standards in accordance with this Order. All charges, including transportation expenses for such replacement, are to be borne by the Seller.

In such event, the Seller may request the Buyer to return the Supplies incorrectly supplied, but in all cases the Seller shall bear all expenses involved including any repackaging and/or transportation charges. Should the Seller elect not to have such Supplies returned, the Buyer may dispose of them in any manner deemed suitable by the Buyer. Should the Seller fail to promptly replace the Supplies incorrectly supplied, with Supplies of the proper and agreed specifications, or to make alternative arrangements mutually agreed upon in writing between the Buyer and the Seller within a reasonable time, the Buyer, at its option, may require the Seller to indemnify the Buyer for all losses or damages resulting therefrom, including without limitation, costs incurred by Buyer for the replacement or correction of such Supplies. The foregoing is in addition to any other rights Buyer may have in contract or at law. Seller shall not again tender rejected or corrected Supplies, unless Seller discloses the former tender and rejection or requirement of correction.

#### 4) ► **Facilities and Special Equipment**

The Seller confirms that it now has, or can readily obtain, without assistance of the Buyer, all facilities tools and special equipment necessary for the timely performance of this Order. Special dies, tools, patterns and the like used in manufacture of the Supplies herein ordered shall be furnished by and at the expense of the Seller.

#### 5) ► **Buyer Furnished Property and/or Materials**

Any materials or property furnished by the Buyer, on other than a charge basis, in connection with this Order, will be deemed loaned to the Seller for purposes of the Order only and title thereto shall, at all times, remain with the Buyer. Seller agrees to fully compensate Buyer for such materials or property, which is not returned to Buyer, either as originally loaned (except for reasonable wear and tear due to the utilization of the same in accordance with the provisions of this Order and for the purpose of this Order only) or as an integrated part of Supplies ordered. Seller agrees to procure a policy or policies of insurance satisfactory to the Buyer, insuring all Buyer owned and supplied property and/or materials while on Seller's premises, against loss or damage. However, the procurement of such policies shall not be deemed as releasing the Seller from its responsibilities with respect to the property of the Buyer.

Seller warrants that Buyer property shall be properly handled and used strictly in accordance with the conditions and restrictions (if any) provided by Buyer, and Seller shall preserve any Buyer furnished material with the same care and in the same manner Seller would preserve its own equipment.

## 6) ► **Packing, Marking and Shipping**

Unless the Seller advises the Buyer, in writing, to the contrary, the prices quoted by the Seller shall include the packing of the Supplies in containers suitable for export via air or sea freight (as applicable), as well as labelling and marking in accordance with Buyer's requirements and delivery in accordance with the Order. Seller further agrees to bear transportation charges as per the applicable Incoterms. Should the Order or any part thereof be sent by surface, the foregoing provisions shall apply, except that the packing will be suitable for surface transportation. Supplies should be shipped in one lot unless specific authorization for partial shipments has been issued by the Buyer. Supplies should be dispatched to the authorized shipper as per Buyer instructions appearing on the face of the Order. In the event the packing material is supplied by the Buyer, the Seller shall verify compliance of the material, prior to shipment.

## 7) ► **Invoices and Shipping Documents**

Each Seller shipment should include the following documentation:

- Packing list – a separate list for each container/package making up the shipment
- Airway Bill or Bill of Lading, depending upon the method of shipment
- Certificate of Origin ("COO"), i.e. Form A if originating in the United States, EURO1 if originating in the EU, etc.
- Certificate of Conformance (C.O.C.) or Certificate of Authenticity (C.O.A.)
- Export license, if required

The packing lists, invoice and either airway bill or bill of lading should specify Seller's supplier number (as appears in the Order), the Order number, the line item number, serial number (if relevant), manufacturer P/N's and a short description of the goods. For shipments that are being made under an export license, Seller shall indicate the export license number and its validity; in cases where no export license is required, Seller shall indicate the category to which the goods exported belong (e.g. NLR, GBS, EAR99, ECCN 3A001.A.11.B).

Each container or package must have its individual packing list showing the contents of the container. One copy of the packing list must re-attach to the outside of the container in a re-sealable plastic envelope, and an additional copy should be placed inside the same containers. Two copies of invoice, (of which one should be a signed original) and two copies of the packing list must be attached to airway bill or bill of lading to accompany shipment. One signed original copy and one copy of the invoice and one copy of the packing list should be sent via airmail and by e-mail directly to

Buyer's invoices center and to the Buyer's purchasing department where applicable. Failure to comply with the above will delay identifying shipments at customs, thus delaying payment. Instructions regarding invoices are included in an attachment to the Order.

Buyer shall include a bank certificate including Buyer's bank details, signed by the bank. Seller shall include a Certificate of Origin as part of the shipping documents. In the absence of an COO, and provided that an origin stamp appears on the invoice or packing list, or Seller specified origin information in the Supplier's letter of instruction, then such stamp or seal shall be deemed as the Seller's irrevocable authorization to the international freight forwarder to provide the COO on behalf of the Seller.

In the event that the Seller is requested to complete the Israel customs verification of the COO, it will cooperate by providing any requested verification data to the Israeli Customs Authority.

Additionally, a scanned copy of all of the documentation will be sent concurrently to Buyer's representative in the Purchasing Department as specified in the Order. For orders that supply services instead of actual goods Seller shall issue and send the original invoice directly to Buyer via airmail. Failure to comply with the aforementioned will delay identifying shipments at customs, thus delaying payment.

## **Invoices:**

Please follow the guidelines below regarding Invoice processing:

The **Original Invoice** document shall be sent to the following address:

Invoice central email: [Invoices@elbitsystems.com](mailto:Invoices@elbitsystems.com)

- File name shall include Elbit's Order number and Invoice number.
- Other communication channels will not be accepted and Invoices will not be handled.
- Other types of documents except Original Invoice (e.g.: Export Invoice, Commercial Invoice, Packing List, etc.) will not be accepted.

1. For each Order, a separate Invoice should be provided.
2. Order number and the Order line number should be indicated on Invoice.
3. Invoice currency must be identical to Order currency.

## 8) ► **Quality Assurance Inspection and Testing**

- a) The Buyer and/or its customer or the duly appointed representative(s) of the Buyer and/or its customer, and/or the relevant regulatory authorities shall be entitled to visit, audit and witness the Seller's facilities or at the premises of any of its subcontractor(s) in line with the purchase order. Also to inspect and test the Supplies to be supplied, both during and after manufacture, whether at the Seller's facilities or at the premises of any of its subcontractor(s). Seller shall provide the labor and the facilities required for proper testing of the Supplies. The Seller undertakes to give Buyer's inspector sufficient advance written notice prior to performing Seller's acceptance tests and all inspections required. Such inspection shall in no way relieve the Seller of its responsibilities under this Order. Any Supplies rejected shall be replaced at the Seller's expense.
- b) The Buyer may, at its sole discretion, employ either 100% inspection or a sampling plan approved by Buyer. Lots which fail to pass such sampling plan may be subsequently 100% inspected by Buyer. Seller will be charged for all such inspection costs. Such inspection shall not constitute final incoming inspection by Buyer, to be performed at Buyer's facility.
- c) All Supplies ordered are subject to Buyer's final incoming inspection and approval, after delivery to Buyer's facilities. Lots which fail to pass incoming inspection test, will be returned to Seller. Rejected Supplies or lots which are returned, shall be returned at Seller's risk and expense for prompt correction and/or replacement, free of charge or for refund, at Buyer's sole discretion. Exercise of these remedies shall not be exclusive, and shall be in addition to any other remedies provided by law or equity which are available to Buyer. Notwithstanding prior payment, it is expressly agreed that payment shall not constitute final acceptance.
- d) Seller shall maintain an effective quality assurance system for control of material quality, assembly, testing, packaging and shipping, and routines for quality verification and corrective actions, which is acceptable to the Buyer and/or its customer. Unless otherwise stated on the face of this Order, such quality assurance system shall be in accordance with the requirements of most updated ISO 9001:2015 standard and/or AS-9100, as applicable.  
For special processes, Seller shall subcontract only vendors approved by Buyer and/or perform them internally subject to Buyer's approval. Seller shall keep all drawings and documents relevant to this Order for a period of seven (7) years from the last delivery.
- e) Seller shall notify Buyer in writing of any non-conformance in relation with the Supplies, and Seller shall obtain Buyer's approval for nonconforming Supplies disposition. Seller shall flow down this directive to its subcontractors involved in this Order.

## 9) ► Changes

- a) Buyer at its sole discretion, at any time, by written change order, may make changes in the Supplies furnished hereunder or their quantities or delivery dates or any other term or condition of the Order. If the cost or delivery time is increased or decreased as a result of such change orders, an equitable adjustment in the Order price and/or delivery schedule will be made in the change order. If a price and/or delivery adjustment is not included in the change order, no increase in price or delay in delivery will be allowed. Any claim by Seller for such adjustment or none-adjustment must be asserted by Seller in writing, within fifteen (15) days from the date of the change Order and prior to the delivery schedule in the change order. In case of a claim regarding delivery dates the Seller agrees that the Buyer has the right to reject the claim for any reason. Buyer may ask the Seller, in writing, to make an Advanced Shipping Notification (ASN) and get the Seller's approval prior to shipment.
- b) This Order shall not be deemed or construed to be modified, amended, cancelled or waived, in whole or in part, except by a written change order hereto signed by the Buyer's authorized representative, and nothing contained in this article (9) shall excuse Seller from proceeding with the change order.
- c) Any major change in Seller's production processes or any other process regarding the Supplies, such as: change in production site location, design changes, replacement of major subcontractor, change in one or more production processes, change that affect the Supplies FFF (Fit, Form and Function), requires an advanced notification by Seller to Buyer, in writing.

## 10) ► Delivery

- a) The terms of delivery are as stated on the face of this Order and shall be construed in accordance with Incoterms 2010.
- b) If Seller's deliveries fail to meet the schedules specified herein and as a result Buyer requires and Seller makes express and/or air shipments, partial shipments, or both, then Seller agrees to assume all resulting excess shipping charges. Invoices covering Supplies shipped in advance of requested delivery schedules will not be paid until their normal maturity after the date specified for delivery.
- c) Notwithstanding the above, neither party shall be liable for delays/defaults due to causes beyond its reasonable control which were unforeseeable and unavoidable. In the event of any such occurrence, the party so affected shall immediately notify the other party of any such case upon occurrence.
- d) Without derogating from Buyer's rights under this Order, or in accordance with the law as provided in article (24) herein, the Buyer may, at its sole discretion, cancel this Order in whole or in part, where there is a delay in delivery for any reason, and in such

case Seller shall have no right to claims against the Buyer for cancellation or any other charges.

- e) The Seller hereby acknowledges that the time of delivery under the Order is of the essence and that the Supplies ordered shall be combined with other Supplies the Buyer shall supply to its customers. Therefore the Seller hereby agrees to indemnify the Buyer for any losses and/or damages and/or expenses incurred by the Buyer due to any delay by the Seller in supplying the Supplies. Delivery ahead of the schedules herein specified is subject to prior written approval by Buyer.
- f) Title to the Supplies shall pass to Buyer, free of all liens, claims and encumbrances, upon delivery thereof in accordance with the provisions of this Order.

## 11) ► **Warranties**

By acceptance of the Order the Seller warrants all Supplies supplied for a period of twelve (12) months, and ten (10) years for latent defects, (unless a different period is specified in writing in this Order) from the date of receipt of the applicable Supplies by the Buyer at its warehouse, against any defect which may arise due to faulty design, workmanship, material or performance. Any defective item will be promptly replaced by Seller without cost to Buyer, and the warranty terms renewed for items replaced. The defective items will be held at the disposal of Seller for return and replacement at its expense. Upon Buyer's request, Seller shall promptly provide Buyer with a 'Return of Material Authorization' number ("RMA"). If Seller fails to provide such RMA, it shall be deemed as Seller's default. This contractual warranty is applicable without prejudice to other warranties available at law.

## 12) ► **Intellectual Property Indemnification**

Seller agrees to save Buyer, Buyer's customers and their representatives, directors and employees (hereinafter the "Indemnitees") harmless against any loss, damage or liability (including any costs and/or expenses incidental thereto) incurred on account of any infringement of any patent or other proprietary rights with respect to any Supplies furnished under this Order, provided that such Supplies are not manufactured solely pursuant to a design furnished to Seller by Buyer. Seller also agrees that it will, at its own expense, defend the Indemnitees against any action, suit or claim in which infringement is alleged, provided Seller is duly notified as to such suit or claim, as soon as practicable. In case the Supplies or any part thereof, are held to constitute an infringement or the use of the Supplies or any part thereof is enjoined, Seller shall, at its own expense, either: (1) procure for Buyer the right to continue using the Supplies or any part thereof; (2) replace same with non-infringing Supplies or parts thereof; or (3) modify the Supplies so that they



become non-infringing. Seller shall not be liable to Buyer only if the Seller proves that any infringement or claim thereof is based upon the use by Buyer of the Supplies in combination with other items where such infringement or claim thereof would not have occurred from the normal use for which the Supplies were designed.

## 13) ► **Proprietary Rights, Rights in Data and Confidentiality**

- a) Where performance under this Order includes experimental, developmental, or research effort or non-recurring items including tooling, and such work is paid for in whole or in part by Buyer, Seller agrees to disclose to Buyer all confidential processes, know-how, trade secrets and any invention, discovery, proprietary information and any tooling resulting therefrom. All patents, copyright, trade secrets, trademarks or other intellectual property resulting therefrom shall be the sole property of the Buyer and at Buyer's request, Seller shall assign to Buyer each invention and proprietary right resulting therefrom, including without limitation any patent or patent application, without additional charge. Seller shall provide support for Buyer's prosecution of such patent application. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use.
- b) In the event the Order includes supply of Supplies that require a license by the Seller and/or by the manufacturer and/or by any third party for the usage of the Supplies and/or the transfer of the Supplies to any third party, either as an independent unit or combined with other items, either hardware or software, the Seller hereby declares that it irrevocably grants such license to the Buyer without restriction, notwithstanding any standard license which may accompany the Supplies, unless the Buyer explicitly agrees to such standard term.
- c) Seller agrees that all information disclosed by Buyer to Seller, including without limitation information contained in drawings, specifications, or other documents, software or other items, which are submitted by Buyer to Seller under or pursuant to this Order, is proprietary to Buyer (hereinafter the "Proprietary Information"), and Seller undertakes that unless the Buyer otherwise approves in writing, the Proprietary Information shall not be utilized in whole or in part by Seller, except for the fulfillment of this Order. Proprietary Information shall not include information which the Seller can prove by evidence in writing to be in the public domain, other than through the fault or negligence of the Seller, or which is known to the Seller at the time of its disclosure without obligation of confidence, or is rightfully obtained without restriction by the Seller from a third party. Seller shall not disclose the Proprietary Information to any third party, and shall take all reasonable precautions to prevent the disclosure of the

Proprietary Information to third parties. Receipt by Seller hereunder of Buyer's Proprietary Information shall not be deemed as a grant of any right or license to Seller with respect to such information. The provisions of this article (13c) shall survive the completion or termination of this Order and continue to be in full force and effect for a period of ten (10) years thereafter.

Upon the completion and/or termination of this Order, Seller shall immediately return to Buyer the Proprietary Information and all copies thereof, or pursuant to Buyer's request, destroying, such Proprietary Information, and provide Buyer a written certificate of destruction.

- d) Any information which is proprietary to Seller and which is disclosed in the products or documents furnished to Buyer hereunder shall be deemed to have been disclosed as a part of the consideration for this Order and Buyer shall have full right to its use as Buyer so deems.
- e) Seller shall comply with all applicable security procedures and regulations, and access to any Proprietary Information which may contain classified information shall be restricted accordingly.
- f) Any advertising of this Order or any news release relating thereto or otherwise relating to Buyer (including the Supplies supplied hereunder and pictures, descriptions or samples thereof) by Seller is prohibited, except with Buyer's prior written approval.

## 14) ► **Stop Work Order**

- a) Buyer may, from time to time by written order, suspend all or part of the work to be performed under the Order for an accumulated period not to exceed one hundred and twenty (120) days (the "Stop Work Order"). Seller shall take all reasonable steps to minimize the recurring of costs allocable to the work covered by the Stop Work Order. Within such period of any stop work, Buyer shall: (i) cancel the Stop Work Order; (ii) terminate the Order in accordance with the "termination" article (for convenience - paragraph b) of the Order; (iii) terminate the Order in accordance with the "termination" article (for default - paragraph a) of the Order if grounds for default exist; or (iv) extend the Stop Work Order period.
- b) Seller shall resume work whenever a Stop Work Order is cancelled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) the Order is not terminated; (ii) the Stop Work Order results in a change in Seller's cost of performance or ability to meet the Order delivery schedule; and (iii) Seller submits a claim for adjustment within fifteen (15) days after the Stop Work Order is cancelled.

## 15) ► Termination

- a) Buyer reserves the right to terminate this Order, or any part hereof, and to cancel all or any part of the undelivered portion of this Order if Seller does not make deliveries as provided in this Order or if Seller otherwise breaches any of the terms hereof, including Seller's warranties. In addition to the aforesaid Buyer shall have the right to terminate this Order or any part thereof, and cancel all or any part of the undelivered portion, in the event of the occurrence of any of the following: (i) insolvency of Seller, and/or (ii) filing of an involuntary petition to have Seller declared bankrupt, (provided it is not cancelled within thirty days from date of such filing), and/or (iii) upon the granting of a winding-up or similar order in respect of the Seller, or if a temporary or permanent liquidator or receiver is appointed in respect of the Seller, or if a temporary or permanent attachment order is granted on all of Seller's assets, or a substantial portion thereof, (provided such order or appointment is not cancelled within 30 days of the grant of such order or the date of such appointment), and/or (iv) the execution by Seller of any assignment for the benefit of its creditors and/or (v) if the Seller passes a resolution for its voluntary winding-up. Buyer shall have no obligation to Seller in respect to the cancelled portion of this Order. Buyer's liability shall be limited to payment for the delivered and accepted portion of this Order which is usable by Buyer at the rate specified on the face hereof (reflecting quantity prices as though this Order had gone to full completion). If as a result of default of performance by the Seller, this Order is terminated in whole or in part and it is necessary to procure any of the specified Supplies elsewhere, then Seller shall be liable for any re-procurement charges which exceed the amount which would have been due to the Seller if it had satisfactorily completed this Order. These remedies shall be cumulative and additional to any other remedies available to Buyer in law or in equity.
- b) Buyer may, for its convenience, terminate work under this Order, in whole or in part, at any time, by giving notice to Seller in writing. Seller will thereupon immediately stop work on this Order, on the terminated portion thereof, and notify any subcontractors to do likewise. Seller shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination, provided that such costs are justified considering the relative point in time of the Order execution and that title to completed and partially completed Supplies, including any material required, are transferred to Buyer. Such costs are to be determined in accordance with recognized accounting principles. Seller shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price. The total of such claim shall not exceed the Order price for the pro-rata portion of this Order which is cancelled, reduced by amounts

previously paid to Seller hereunder.

- c) Termination claims shall be subject to inspection and audit by the Buyer in the event of termination under this clause.

## 16) ► **Prices**

Unless otherwise specified in this Order, prices indicated in the Order are firm, fixed and final, not subject to any change or escalation and inclusive of all taxes, fees and levies.

## 17) ► **Payment Terms**

Payment terms shall be as agreed between Buyer and Seller and as specified in writing in the Order.

## 18) ► **Indemnity**

Seller shall indemnify and hold harmless Buyer, its customers and their officers, employees, agents and invitees from and against all claims, judgements, liabilities, losses, injuries and damages of every and/or any nature, including without limitation, in respect of injuries or death to persons or damages to property (including costs and expenses incidental thereto), caused by: (i) the acts or omissions to act by the Seller, its officers, employees, agents, invitees or vendors, directly or indirectly arising out of the performance of this Order or any act or failure to act by subcontractors or suppliers of the Seller; and/or (ii) the Supplies delivered hereunder; and/or (iii) the violation by Seller or its subcontractor(s) or their respective officers, employees, agents, invitees or vendors of any applicable laws, acts or regulations.

## 19) ► **Assignment**

Seller shall not be entitled to assign or otherwise transfer any of its rights and obligations under this Order or in relation to this Order to any third party, without Buyer's prior written consent.

Buyer is entitled to freely assign all or any part of its rights or obligations under this Order to any affiliated parent, subsidiary or associated company.

## 20) ► **Taxes**

Buyer shall not be liable under or in connection with this Order for any governmental, municipal or other taxes, duties, levies and/or compulsory payments.

## 21) ► **Export / Import Authorizations**

- a) Seller shall be responsible to obtain an export permit/license, and any other license or approval, to the extent required, under applicable law for the supply of the Supplies or performance of services under this Order. Buyer shall be responsible to obtain an import permit for the same, if required under applicable law. Seller shall be responsible for obtaining all other approvals, permits and licenses required to meet its obligations under this Order.
- b) Seller shall notify buyer in advance what export control requirements apply to the Supplies and in case any form of statement, including but not limited to an End Use/End User Statement and/or a request for the transfer of information is required, Seller shall obtain written approval from Buyer for providing the required statement and/or transfer of information.
- c) Seller shall document an orderly registration of the export controlled items, and upon delivery to Buyer shall provide Buyer with the relevant permits and/or licenses.

## 22) ► **Product Discontinuance Notification**

Seller shall give Buyer at least eighteen (18) months prior written notice of any obsolete/discontinuance/withdrawal of the manufacture of any component/item. Seller shall provide Buyer with sufficient data and information (i.e., relevant P/N's, last time buy and last time ship date, etc.) to facilitate "Last Buy" action by Buyer. Seller shall endeavor to offer Buyer alternative component(s) that shall not cause any degradation in performance. If at any time the discontinued parts are reinstated and returned to full production status, Seller shall inform Buyer without delay.

## 23) ► **Disputes**

All disputes between the parties hereto which cannot be settled by agreement between the parties shall be finally settled by litigation in the courts of Israel in Haifa or Tel-Aviv at Buyer's discretion, exclusively, to whose jurisdiction the parties hereby consent.

## 24) ► **Governing Law**

The law governing this Order shall be the law of the State of Israel without reference to its conflict of laws principles.

## 25) ▶ Code of Conduct

Buyer is committed to best practices regarding integrity in business conduct, including in its dealings with its suppliers, contractors and consultants.

Buyer's commitment to operate according to ethical standards is an important factor in enabling the Buyer to meet its business goals and demands of today's marketplace.

A reliable and ethical supply chain is critical for the Buyer's ability to support its and its customers' goals.

Integrity, safety and quality are fundamental to the Buyer's performance, and Buyer encourages a collaborative environment with its supply chain in these areas. Buyer's customers rely on Buyer to work with suppliers, subcontractors and other business partners who share these values.

To support the business integrity of Buyer's activities, Buyer requires that members of its supply chain endorse its values relating to the range of areas set forth in Buyer's Supplier Code of Conduct (the "Code"). The principles set forth in the Code represent a fundamental part of Buyer's mutual commitment on how it does business and are integral to every relationship Seller has with Buyer. The Code can be found on Buyer's website at: [www.elbitsystems.com](http://www.elbitsystems.com) under "About" - "Ethics and Conduct" - "Supplier Code of Conduct" or under "Investor Relations" - "Corporate Governance" - "Ethics and Conduct" - "Supplier Code of Conduct". The Code forms an integral part of this Order.

## 26) ▶ Prohibited Software

- a) This clause only applies to Supplies that include the delivery of software.
- b) As used herein, "prohibited license" means the general public license ("GPL") or lesser/library GPL, the artistic license (e.g., Perl), the Mozilla public license, the Netscape public license, the sun community source license, the sun industry standards license, or variations thereof, including without limitation licenses referred to as "GPL-compatible, free software license."
- c) "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any: (1) open source or "free" software, library or documentation; or (2) software licensed under or that subjects the software to a prohibited license; or (3) software provided under a license that requires the delivered software to be licensed for the purpose of making derivative Supplies or be redistributable at no charge, or obligates Buyer to make available in any way or accessible to any third party the delivered software, in any format, or any portion thereof, any products and/or object code and/or source code formats incorporating the delivered software.
- d) Unless Seller has obtained Buyer prior written consent, which Buyer may withhold in

its sole discretion, Seller shall not use in connection with this Order, or deliver to Buyer, any prohibited software.

- e) Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use, or the delivery, in connection with this Order of prohibited software.

## 27) ► Counterfeit Materiel Prevention

- a) Seller represents and warrants, by acceptance of the Order, and certifies with each shipment of deliverables that only new and authentic materials will be used and they contain no counterfeit materiel. Seller shall only purchase authentic materials/components directly from the Original Equipment Manufacturer ("OEM") or the Original Component Manufacturer ("OCM") or through the OEM'S/OCM'S authorized or franchised distribution chain. Seller further represents and warrants that it has (or will have) and will make available to Buyer, at Buyer's request, all acquisition/procurement documentation from the OEM/OCM or their authorized or franchised distribution chain that authenticates traceability of each part, component, module or assembly of Seller's products or goods back to the applicable OEM/OCM.
- b) For purposes of this paragraph, "Counterfeit Materiel" shall mean a part, component, module, or assembly or other supplies whose origin, material, source of manufacture, performance, or characteristics are misrepresented. The term "counterfeit materiel" includes, but is not limited to: (a) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer; (b) defective parts and/or surplus material scrapped by the original manufacturer; or (c) previously used materiel pulled, repaired or otherwise reclaimed and provided as "new".
- c) Seller will establish and maintain a counterfeit materiel prevention and control plan, using as a guideline aerospace standards SAE AS5553 and AS6174. The purpose of the plan shall be to prevent the delivery of counterfeit materiel and control of materiel identified as counterfeit.
- d) If counterfeit materiel are furnished under this Order, Buyer shall have the right to act in accordance with AS6174 and AS5553 including, impounding and rendering physically unusable the materiel. Seller shall be liable for all costs related to the materiel impounding, rendering physically unusable, removal and replacement. Buyer reserves the right to withhold payments for said materiel. Buyer also reserves the right to report and to turn over such counterfeit materiel to the relevant authorities.
- e) Notwithstanding the above and in addition, in the event that the end user is the USG,

as defined in article 32 herein (“U.S Government Clauses”), then DFARS 252.246-7007 (Contractor Counterfeit Electronic Part Detection and Avoidance System), as well as the “National Defense Authorization Act” (“NDAA”) article 818, are fully applicable.

- f) In the event of contradictions between the DFARS or the NDAA provisions and the other provisions of this article, “counterfeit material prevention”, the more stringent provisions shall apply.
- g) Seller shall include the terms of this article in its subcontracts to the extent relevant.
- h) In case the Seller, or any of its subcontractors, cannot purchase electronic parts directly from the OEM’s/OCM's or through the OEM’s/OCM’s authorized or franchised distribution chain, the parts shall be inspected for authenticity in an AS6081/ AS6171/ ISO 17025 certified lab, for each date code/lot code in accordance with standard AS6081 Level A (detailing the tests and the sample size), in addition to scrape test and solderability test: 3 units per date code/lot code. In case of electronic passive part, the lab shall perform electrical test (in case it is applicable for the inspected part number). The lab shall have membership for both GIDEP and ERAI organizations. The lab shall check for each inspected part number, whether there were GIDEP or ERAI alerts and indicate it in the report.

## 28) ► **Cyber Security Incident Reporting**

It is Buyer’s customers’ and Buyer’s expectation that Buyer will be notified if any information provided by Buyer or generated in support of business with Buyer is impacted as a result of a cybersecurity incident. Therefore:

- Seller must notify Buyer within 72 hours if any Buyer’s or customer’s information provided as part of, or generated in support of, Contract performance is “Compromised.”
- “Compromised” is defined as unauthorized access, inadvertent disclosure, known misuse, loss, destruction or alteration of information provided by the Buyer, other than as what was outlined in the agreed to scope of work.
- Seller must take appropriate and immediate actions to investigate and contain the incident and any associated risks.
- Seller should also provide reasonable cooperation to Buyer in conducting any investigation regarding the nature and scope of the incident.
- Costs incurred in investigating or remedying incidents are the responsibility of the Seller.



## 29) ► **Miscellaneous**

- a) Failure of Buyer to enforce its rights under this Order shall not constitute a waiver of such rights or of any other rights under this Order or otherwise. Buyer's rights and remedies specified herein shall be cumulative and in addition to any other rights and remedies available in law or equity.
- b) The invalidity, in whole or in part, of any provision hereof shall not invalidate or otherwise affect the validity of any other provision.
- c) Seller represents and warrants that this Order shall be performed by it as an independent contractor and that no employer-employee relationship shall exist in connection therewith.
- d) Seller shall include these Order terms and conditions, to the extent relevant, in its subcontracts.
- e) Unless otherwise agreed to in the Order, all documentation, labels, drawings, letters and communications of any kind will be presented in the English language.
- f) Buyer shall be entitled to the right to set-off against any amounts payable under this Order.
- g) Buyer's policy is to use "conflict-free" minerals in its products. As part of its conflict minerals compliance policy, Buyer requires that suppliers of raw materials or products shall provide any information requested by Buyer (in sufficient detail), with written certifications thereof, to enable Buyer to timely comply with all of Buyer's and Buyer's customer's due diligence, disclosure and audit requirements under article 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934, and all similar, applicable statutes and regulations, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in article 1502(e)(4) of the Dodd-Frank Act) contained in each product and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined).

## 30) ► **Offset**

Buyer shall be entitled to all offset credits resulting out of this Order. Seller shall support Buyer by providing documentation and information, as requested by Buyer or the relevant authorities, to support and approve claims for offset credits for the Buyer.

## 31) ► **Survival**

Notwithstanding any termination, any provision set forth in this Order remaining to be performed in whole or in part, capable of taking effect following termination, or which by its nature is contemplated to survive the termination of this Order, shall survive and continue in full force and effect despite termination.

## 32) ► **U.S. Government Clauses**

If this Order is under a program for end use by the U.S. Government (“USG”), as indicated by Order lines showing a U.S. prime contractor for USG end use or a U.S. Defense Priorities and Allocation System (DPAS) rating, then the [USG Annex](#) attached hereto forms an integral part of the Order. In addition, for such Orders:

- a) Buyer will be entitled to provide copies of, or information related to, the Order to Buyer’s U.S. prime contractor, the USG and/or a higher tier U.S. contractor when Buyer is required to submit supporting data to meet USG requirements.
- b) In the event Buyer will share with Seller “Sensitive Information” (as such term is defined below), Seller will treat such information as confidential and will follow cyber security policies and procedures based on industry standards, e.g. ISO 27001 and/or NIST 800-171 as well as any other security instructions provided by Buyer. “Sensitive Information” means information that will be marked or defined by Buyer as sensitive information according to the U.S. Government Defense Federal Acquisition Regulation Supplement (DFARS).
- c) The [USG Annex](#) only applies if the Order is a firm-fixed price Order (not a cost plus or time and materials Order).

## 33) ► **Notices**

Notices required or designed to be sent to either party hereunder, shall be sent by first class pre-paid air mail and by e-mail, to the address of the relevant party as indicated on the Order, and to the attention of the contact person indicated on the Order, to the extent indicated.

## USG Annex

### General Provisions and FAR/DFARS Flow-down Provisions for Subcontracts Under a Program for End Use by the U.S. Government

#### 1. Introduction

Further to the “U.S. Government Clauses” Article of the Order, this Annex is applicable to any Order where the ultimate end user is the U.S. Government (“**USG**”). In such case this Annex includes flow-down provisions and other requirements applicable to the Order.

#### 2. Definitions

In addition to the definitions appearing elsewhere in this Order, the following definitions will apply to this Annex and, unless otherwise specifically provided, will also apply with respect to the USG Clauses (FAR/DFARS clauses) listed in this Annex.

- a) “**Commercial Item**” means a ‘commercial item’ as defined in FAR 2.101. Commercial items are those customarily used by the general public or by non-governmental entities for purposes other than government purposes and are sold or offered for sale to the general public. For example, processors, memory chips, electronic components and software operating systems are usually considered as commercial items.
- b) “**Contract**” means this Order.
- c) “**Contractor**” means Seller.
- d) “**Cost or pricing data**” means cost or pricing data as defined in FAR 2.101.
- e) “**Contracting Officer**” (or “**Government**”, “**ACO**” or similar terms) means Buyer or Buyer’s representative.
- f) “**DFARS**” means the Defense Federal Acquisition Regulation Supplement.
- g) “**Dispute**” refers to the Disputes Article of the Order (and not to the Contract Disputes Act, which will not applicable to this Order).
- h) “**DPAS**” means the U.S. Defense Priorities and Allocation System.
- i) “**FAR**” means the Federal Acquisition Regulation.
- j) “**Government**” (or “**Contracting Officer**”, “**ACO**” or similar terms) means Buyer or Buyer’s representative.
- k) “**Item**” means goods, parts, components or supplies, including hardware, firmware, software or documents, to be delivered by Seller under this Order.

- l) **“Non-Commercial Item”** means an Item other than a Commercial Item.
- m) **“Offeror”** means Seller.
- n) **“Prime Contract”** (or **“Government Contract”**) means the contract between Buyer and the USG or between Buyer and its higher-tier contractor in support of a program for USG end use.
- o) **“Services”** means any labor or effort supplied by Seller, incidental to the supply of an Item, including for example installation, repair or maintenance, as well as design, engineering, training or other professional services performed by Seller under the Order.
- p) **“Subcontract”** means Seller’s subcontracts with its suppliers and vendors relating to this Order.
- q) **“USG Clauses”** means the FAR and DFARS clauses applicable to this Order.
- r) **“Work”** means work performed by Seller under this Order.

### 3. Defense Priorities and Allocation System (DPAS) Rating

- a) If a DPAS rating is identified in this Order then this Order is a “Rated Order” certified for national defense use, and Seller will follow all the requirements of the DPAS regulations. If this Order is DX or DO-Rated, and exceeds \$50,000, Seller must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated Orders within fifteen (15) days, of receipt of the Order. For unrated Orders Seller will acknowledge acceptance of the Order within ten (10) days of receipt.
- b) Without derogating from the foregoing, in the absence of Seller’s written acknowledgement, Seller’s commencement of performance of Work will be deemed Seller’s acceptance of this Order.

### 4. Other USG Requirements

- a) Seller represents that neither Seller and/or any of its principles are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any U.S. federal agency.

- b) Seller will comply with all applicable U.S. federal, state and local laws, regulations and directives applicable to Seller's performance of Work under this Order.
- c) By accepting this Order from Buyer, Seller acknowledges compliance with the relevant USG Clauses, as well as the applicable mandatory certifications and representations.
- d) Seller will indemnify Buyer against, and hold Buyer harmless from, all expenses, losses and claims arising out of Seller's performance of this Order or by Seller's failure to comply with the applicable USG Clauses and other rules, regulations and standards.
- e) USG Clauses do not establish privity between Seller and Buyer's Prime Contractor or the USG. Notwithstanding any provision to the contrary, Seller will have no right to pursue a claim or any other relief directly against Buyer's Prime Contractor or the USG. Any communication or notification required under the USG Clauses to or from Seller to Buyer's Prime Contractor or the USG will be made through Buyer.

## 5. USG Clauses Flow-down Provisions

- a) The FAR and DFARS clauses (the "USG Clauses") listed below are incorporated herein by reference and are applicable with the same force and effect as if they were given in full text.
- b) If any of the below listed USG Clauses do not apply to this Order, due to criteria applicable to the applicable USG Clause (such as monetary threshold, place of performance or type of effort or contract), such USG Clause will be considered to be self-deleting.
- c) No other documents in the Order supersede applicable USG Clauses.
- d) The USG Clauses listed below are incorporated by reference, as applicable, and in the manner set forth below. For certain USG Clauses, Buyer has provided parenthetical language describing the circumstances in which the applicable USG Clause applies to the Order. This parenthetical language may not encompass all situations where USG Clauses apply, and Seller is responsible for confirming whether a particular USG Clause is applicable to the Order.
- e) If Seller is a non-U.S. company, clauses marked with an asterisk (\*) apply to this Order only if work under the Order will be performed in the United States or Seller is recruiting employees in the United States to work on the Order.
- f) The effective version of the USG Clauses will be the version in effect as of the date this Order is issued unless a different version appears in Buyer's Prime Contract, in which

case the version in Buyer's Prime Contract applies. The Parties hereby agree to amend this USG Annex to include any additional or revised USG Clauses incorporated in Buyer's Prime Contract that are applicable to the performance of this Order. The Parties will handle any such amendments under the "Changes" Article of this Order.

- g)** Seller will flow down to its lower-tier subcontractors all applicable USG Clauses and any other requirements of this Order and applicable law so as to enable Buyer and Seller to comply with all applicable flow down requirements of Buyer's Prime Contract.
- h)** The USG Clauses will apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer under the Order, to reflect Seller's obligations to Buyer and to the USG and to enable Buyer to meet its obligations to the USG under the Prime Contract. Consequently, in interpreting and applying USG Clauses flowed down to Seller, and as the context may require, the terms "Government", "Contracting Officer" and equivalent phrases will mean Buyer and/or Buyer's Representative. However, the terms "Government" and "Contracting Officer" do not change in the following circumstances:

  - (i) in the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;"
  - (ii) in the Patent Rights clauses incorporated therein, if any;
  - (iii) when a right, act, authorization or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;
  - (iv) when title to property is to be transferred directly to the Government;
  - (v) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Order; and
  - (vi) where specifically modified in this Order.
- i)** USG Clauses flowed down by Buyer to Seller may require Seller to make representations and/or submit certifications. All such required representations and certifications made by Seller in connection with flow down of USG Clauses, including all such certifications submitted by Seller with its offer, are hereby incorporated in this Order by reference. With respect to applicable USG Clauses Seller will furnish to Buyer (or directly to the Government upon request of Buyer) any certificate required with respect to Seller's compliance with the applicable USG Clause, ordinances or regulations. As used herein, the word "certificate" will include any plan or course of action or record keeping function, as, for example, a small business subcontracting plan for which flow down is required.

## I. USG Clauses Applicable to all Orders

### 1. FAR Clauses:

- 52.203-12** **Limitation on Payments to Influence Certain Federal Transactions** (Applies to Orders exceeding \$250,000.)
- 52.204-9** **Personal Identity Verification of Contractor Personnel** (Applies where Seller will have physical access to a Federally-controlled facility or access to a Federal information system.)
- 52.204-10** **Reporting Executive Compensation and First-Tier Subcontract Awards\*** (Applies to Orders exceeding \$30,000. If Seller meets the thresholds specified in paragraphs (c)(2) and (d) of the clause, Seller will report required executive compensation by posting in the Government's Central Contractor Registration (CCR) database <http://www.ccr.gov>. All information posted will be available to the general public. )
- 52.209-6** **Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment** (Applies for Orders exceeding \$30,000 other than for COTS items.)
- 52.215-20** **Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data**
- 52.215-21** **Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications**
- 52.222-26** **Equal Opportunity\***
- 52.222-35** **Equal Opportunity for Veterans\*** (Applies to Orders exceeding \$250,000.)
- 52.222-36** **Affirmative Action for Workers with Disabilities\*** (Applies to Orders exceeding \$15,0000.)
- 52.222-37** **Employment Reports on Veterans\*** (Applies to Orders exceeding \$250,000.)
- 52.222-41** **Service Contract Labor Standards\*** (Applies if this Order is for Services subject to the Service Contract Act.)
- 52.222-50** **Combating Trafficking in Persons**
- 52.222-54** **Employment Eligibility Verification\***
- 52.223-6** **Drug Free Work Place\***

- 52.223-11 **Ozone-Depleting Substances\*** (Applies if the Work was manufactured with or contains ozone-depleting substances.)
- 52.225-1 **Buy American Act--Supplies** (Applies if the Work contains other than U.S. domestic components.)
- 52.225-5 **Trade Agreements** (Applies if the Work contains other than U.S. domestic components.)
- 52.225-13 **Restrictions on Certain Foreign Purchases**
- 52.245-1 **Government Property** (Applies if Seller uses any Government Property.)
- 52.247-64 **Preference for Privately Owned U.S.-Flag Commercial Vessels**

## 2. DFARS Clauses:

- 252.204-7008 **Requirements for Contracts Involving Export-Controlled Items**  
(Note: Israel is a Qualifying Country.)
- 252.211-7003 **Item Identification and Valuation** (Applies if this Order requires the Work to contain unique item identification (UID).)
- 252.223-7008 **Prohibition of Hexavalent Chromium**
- 252.225-7001 **Buy America Act and Balance of Payments Program Certificate\***
- 252.225-7007 **Prohibition on Acquisition of United States Munitions List Items From Communist Chinese Military Companies** (Applies if Seller is supplying items on the U.S. Munitions list.)
- 252.225-7009 **Restriction on Acquisition of Certain Articles Containing Specialty Metals** (Applies to Orders for Items containing specialty metals.)
- 252.225-7021 **Trade Agreements** (Applies if the Work contains other than U.S.-made, Qualifying Country or Designated Country end products. Applies in lieu of FAR 52.225-5. Note: Israel is a Qualifying Country.)
- 252.226-7001 **Utilization of Indian Organizations, Indian owned Economic Enterprises, and Native Hawaiian Small Business Concerns - DOD Contracts\*** (Applies if the Order exceeds \$550,000.)
- 252.227-7019 **Validation of Asserted Restrictions – Computer Software**



**252.227-7037 Validation of Restrictive Markings on Technical Data**

**252.249-7002 Notification of Anticipated Contract Termination or Reduction**  
(Applies if the Order exceeds \$650,000. Substitute “Buyer” for “Contracting Officer” and “ACO”. Delete paragraph (d) (1) and the first five words of paragraph (d) (2).)

## II. Additional Clause Applying to Orders for Non-Commercial Items

### 1. FAR Clauses:

- 52.203-3 Gratuities** (Applies to Orders exceeding \$250,000.)
- 52.203-5 Covenant Against Contingent Fees** (Applies to Orders exceeding \$250,000.)
- 52.203-6 Restrictions on Subcontractor Sales to the Government** (Applies to Orders exceeding \$250,000.)
- 52.203-7 Anti-Kickback Procedures** (Applies to Orders exceeding \$250,000.)
- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (Applies to Orders exceeding \$250,000.)
- 52.204-2 Security Requirements** (Applies if the Work requires access to classified information.)
- 52.211-5 Material Requirements**
- 52.211-15 Defense Priority and Allocation Requirement**
- 52.214-26 Audit and Records- Sealed Bidding** (Applies for awards made under sealed bidding.)
- 52.214-27 Price Reduction for Defective Cost or Pricing Data** (Applies for modifications made under sealed bidding.)
- 52.214-28 Subcontractor Cost or Pricing Data - Modifications** (Applies for sealed bidding.)
- 52.215-2 Audit and Records-Negotiation** (Applies to Orders exceeding \$250,000 and if Seller is required to furnish cost or pricing data, funding or performance reports, or if this Order is an incentive or re-determinable type.)
- 52.215-10 Price Reduction for Defective Cost or Pricing Data** (Rights and obligations under this clause will survive completion of the Work and final payment.)

- 52.215-11 Price Reduction for Defective Cost or Pricing Data- Modifications** (Rights and obligations under this clause will survive completion of the Work and final payment.)
- 52.215-12 Subcontractor Cost or Pricing Data** (Applies if the Order exceeds \$700,000 and is not otherwise exempt under FAR 15.403.)
- 52.215-13 Subcontractor Cost or Pricing Data - Modifications** (Applies to Orders exceeding \$550,000.)
- 52.215-14 Integrity of Unit Prices**
- 52.215-15 Pension Adjustments and Asset Reversions**
- 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions**
- 52.215-23 Limitation on Pass-Through Charges** (Applies to Orders exceeding \$550,000.)
- 52.219-8 Utilization of Small Business Concerns\*** (Applies to Orders exceeding \$250,000. As prescribed in FAR 19.704 (a)(9) each subcontractor will include this clause in all lower tier subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 to adopt a plan that complies with the requirements of FAR 52.219-9, Small Business Subcontracting Plan.)
- 52.222-1 Notice of Government Labor Disputes\***
- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation\*** (Applies to Orders exceeding \$250,000.)
- 52.222-20 Walsh-Healey Public Contracts Act\***
- 52.222-21 Prohibition of Segregated Facilities\***
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act\*** (Applies to Orders exceeding \$250,000.)
- 52.223-3 Hazardous Material Identification and Material Safety Data** (Applies to Orders involving hazardous materials.)
- 52.225-8 Duty Free Entry** (Applies to Orders for supplies that may be imported into the U.S.)
- 52.227-1 Authorization and Consent (Alternate I)**
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement** (Applies to Orders exceeding \$250,000.)

- 52.227-3 Patent Indemnity** (Applies to Orders exceeding \$250,000.)
- 52.227-9 Refund of Royalties**
- 52.227-10 Filing of Patent Applications-Classified Subject Matter** (Applies if the Work or any patent application may cover classified subject matter.)
- 52.227-11 Patent Rights-Ownership by the Contractor** (Applies unless an alternative Patent Rights Clause applies to this Order. FAR 52.227-13 applies in lieu of FAR 52.227-11 if Seller is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.)
- 52.227-13 Patent Rights-Ownership by the Government** (Applies if this Order is for experimental, developmental or research Work and Seller is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.)
- 52.227-14 Rights In Data - General** (Does not apply if DFARS 252.227-7013 applies.)
- 52.228-3 Workers' Compensation Insurance (Defense Base Act)**
- 52.228-5 Insurance - Work on a Government Installation** (Applies to Orders involving Work on a Government installation.)
- 52.229-6 Taxes - Foreign Fixed Price Contracts**
- 52.230-2 Cost Accounting Standards** (Full CAS coverage applies unless an exception is authorized.)
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices** (Applies only when referenced in this Order or in the Prime Contract that modified CAS coverage applies.)
- 52.230-4 Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns** (Applies only when referenced in this Order or the Prime Contract that modified CAS coverage applies.)
- 52.230-6 Administration of Cost Accounting Standards** (Applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.)
- 52.233-3 Protest After Award and Stop Work procedure pursuant to FAR 33.1**
- 52.237-2 Protection of Government Buildings, Equipment and Vegetation**
- 52.242-13 Bankruptcy** (Applies to Orders exceeding \$250,000.)
- 52.242-15 Stop-Work Order** (If Buyer's Prime Contractor has directed Buyer to stop

performance of the work under the Prime Contract, Buyer may direct Seller to stop performance of Work called for by this Order. In paragraph (f) add after “33.104(h) (1)” the following: “and recovers those costs from Buyer”.)

- 52.243-1 Changes - Fixed Price**
- 52.244-5 Competition in Subcontracting Far 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving\*** (Applies to Orders exceeding \$250,000.)
- 52.245-17 Special Tooling**
- 52.245-18 Special Test Equipment**
- 52.246-2 Inspection of Supplies - Fixed Price**
- 52.246-4 Inspection of Services - Fixed Price**
- 52.246-16 Responsibility for Supplies**
- 52.247-63 Preference for U.S.-Flag Air Carriers** (Applies to Orders that involve international air transport.)
- 52.248-1 Value Engineering** (Applies to Orders exceeding \$250,000.)
- 52.249-2 Termination for Convenience of the Government (Fixed-Price)** (Insert “or Buyer” after “Government” in this clause in paragraphs (b) (4) and (b) (6), as well as to all of paragraph (b) (8) and to the second time “Government” appears in paragraph (d). In paragraph (n) “Government” means “Buyer and the Government”. In paragraph (c) “120 days” is changed to “60 days.” In paragraph (d) “15 days” is changed to “30 days,” and “45 days” is changed to “60 days.” In paragraph (e) “1 year” is changed to “6 months.” Paragraph (j) is deleted. In paragraph (l) “90 days” is changed to “45 days.” Settlements and payments under this clause may be subject to the approval of the USG Contracting Officer.)
- 52.249-8 Default (Fixed Price Supply and Service)** (Substitute “Buyer” for “Government” or “United States” or “Contracting Officer” throughout this clause, except for paragraph (c). Insert “or Buyer” after the second and third time “Government” appears in paragraph (e). Timely performance is a material element of this Order.)

## 2. DFARS Clauses:

- 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies** (Applies to Orders exceeding \$250,000.)

- 252.203-7003 Contractor Code of Business Ethics and Conduct** (Applies to Orders exceeding \$5,500,000. Disclosures made under this clause will be made directly to the Government.)
- 252.203-7004 Display of Hotline Posters\*** (Applies to Orders exceeding \$5,500,000 unless they are for commercial items or performed entirely outside the United States).
- 252.204-7000 Disclosure of Information** (Applies to Orders when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.)
- 252.209-7001 Disclosure of Ownership or Control by Government of Terrorist Country** (Applies to Orders exceeding \$25,000.)
- 252.211-7000 Acquisition Streamlining -** (Applies to Orders exceeding \$1,500,000.)
- 252.215-7000 Pricing Adjustments** (Applies if FAR 52.215-12 or 52.215-13 applies to this Order.)
- 252.215-7002 Cost Estimating System Requirements**
- 252.219-7003 Small Business Subcontracting Plan\*** (Applies if FAR 52.219-9 applies to this Order. The Seller's subcontracting plan is incorporated herein by reference.)
- 252.222-7006 Restriction on the Use of Mandatory Arbitration Agreements** (The certification in paragraph (b)(2) applies both to Seller in its own capacity and to Seller's covered subcontractors.)
- 252.223-7001 Hazard Warning Labels** (Applies for goods that require submission of hazardous material data sheets (see FAR 23.302(c).)
- 252.223-7002 Safety Precautions for Ammunition and Explosive** (Applies only if the Items furnished under this Order contain ammunition or explosives, including liquid and solid propellants.)
- 252.223-7003 Change In Place of Performance Ammunition and Explosives** (Applies if the Items furnished under this Order contain ammunition or explosives, including liquid and solid propellants.)
- 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials** (Applies to Orders that may require Seller to treat or dispose of non-DoD-owned toxic or hazardous materials.)

- 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives** (Applies if this Order is for the development, production, manufacture or purchase of arms, ammunition and explosives or when arms, ammunition and explosives will be provided to Seller as Government Furnished Property.)
- 252.225-7002 Qualifying Country Sources as Subcontractors**
- 252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the US** (Applies to Orders exceeding \$550,000. Paragraph (f) is deleted.)
- 252.225-7008 Restriction on Acquisition of Specialty Metals** (Applies to Orders for the delivery of specialty metals when DFARS clause 252.225-7009 is in the Prime Contract. Note: Israel is a Qualifying Country.)
- 252.225-7012 Preference For Certain Domestic Commodities**
- 252.225-7013 Duty Free Entry\***
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings** (Applies if Work supplied under this Order contains ball or roller bearings.)
- 252.225-7025 Restriction on the Acquisition of Forgings**
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales**
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments** (Applies to Orders under international military education training and FMS prime contracts.)
- 252.225-7032 and 7033 Waiver of United Kingdom Levies Evaluation of Offers** (Applies if this Contract is with a United Kingdom entity.)
- 252.225-7037 Duty Free Entry - Eligible End Products**
- 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the US**
- 252.227-7013 Rights in Technical Data - Non-Commercial Items** (Applies to solicitations and resulting contracts when Seller's technical data will be provided to Buyer for delivery to the USG. Applies in lieu of FAR 52.227-13.)
- 252.227-7014 Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation** (Applies to solicitations and resulting contracts when Seller may deliver computer software or

computer software documentation to Buyer for delivery to USG. Applies in lieu of FAR 52.227-14.)

- 252.227-7016** **Rights in Bid or Proposal Information** (Applies to solicitations and resulting contracts that will include DFARS clauses 252.227-7013, 252.227-7014 or 252.227-7018.)
- 252.227-7017** **Identification and Assertion of Use, Release, or Disclosure Restrictions** (Applies to solicitations and resulting contracts that will include DFARS clauses 252.227-7013, 252.227-7014 or 252.227-7018.)
- 252.227-7018** **Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR)**
- 252.227-7025** **Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends**
- 252.227-7026** **Deferred Delivery of Technical Data or Computer Software**
- 252.227-7027** **Deferred Ordering of Technical Data or Computer Software**
- 252.227-7028** **Technical Data or Computer Software Previously Delivered** (The definitions for “contract” and “subcontract” will not apply, except for the first reference to “contract”.)
- 252.227-7030** **Technical Data - Withholding of Payment** (Applies to solicitations and resulting contracts that include DFARS clauses 252.227-7013 or 252.227-7018.)
- 252.227-7032** **Rights in Technical Data and Computer Software (Foreign)**
- 252.227-7038** **Patent Rights - Ownership by the Contractor (Large Business)**
- 252.228-7001** **Ground and Flight Risk** (Applies to Orders involving acquisition, development, production, modification, maintenance, repair, flight or overhaul of aircraft.)
- 252.228-7005** **Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles**
- 252.231-7000** **Supplemental Cost Principles** (Applies to Orders that are subject to the principles in FAR subparts 31.1, 31.2, 31.6 or 31.7.)

- 252.235-7003 Frequency Authorization** (Applies if this Order requires developing, producing, constructing, testing or operating a device requiring a frequency authorization.)
- 252.243-7001 Pricing of Contract Modifications**
- 252.246-7001 Warranty of Data, Alternate II** (Applies when the Prime Contract includes DFARS 252.227-7013.)
- 252.246-7003 Notification of Potential Safety Issues** (Applies if this Order is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. Seller will provide notifications to Buyer and the contracting officer identified to Seller.)
- 252.247-7023 Transportation of Supplies by Sea** (Applies to Orders exceeding \$250,000. Applies in lieu of FAR 52.247-64 in all contracts for ocean transportation of supplies. Paragraph (f) and (g) will not apply if this Order is at or below \$150,000.)
- 252.247-7024 Notification of Transportation of Supplies by Sea**

### III. Additional Clauses Applying to Orders for Commercial Items

#### 1. FAR Clauses:

- 52.212-4 Contract Terms and Conditions - Commercial Items** (Applies to all subcontracts when the Prime Contract is for “Commercial Items”.)
- 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items** (FAR clauses 52.212-5 (a), (b), (c) and (d) will apply if included in the Prime Contract.)
- 52.227-19 Commercial Computer Software Restricted Rights**
- 52.244-6 Subcontracts for Commercial Items** (Applies to subcontracts for “Commercial Items” when the Prime Contract is not for a Commercial Item. This clause prescribes nine mandatory FAR flow-downs applicable to all subcontracts for Commercial Items at all tiers.)



## 2. DFARS Clauses:

**252.227-7015 Technical Data - Commercial Items** (Applies when technical data related to commercial items developed at private expense will be provided under this Order to Buyer for delivery to the USG.)

**252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD)**

## IV. Certifications and Representations

The following certifications and representations are material representations of fact upon which Buyer will rely in awarding this Order. By accepting this Order, Seller certifies its compliance with, and/or due submittal of, the representations and certifications as set forth below. Seller will immediately notify Buyer of any change of status with regard to these certifications and representations.

### 1. Certifications Applicable to All Orders:

(A) **FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** - (Applicable to solicitations and Orders exceeding \$100,000)

(a) **Definitions.** As used in this provision-- "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR 52.203-12.

(b) **Prohibition.** The prohibition and exceptions contained in the FAR 52.203-12 are hereby incorporated by reference in this provision.

(c) **Certification.** Seller hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Order. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this Order, Seller will complete and submit, with its offer, to ESA OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made. Submission of this certification and disclosure is a prerequisite for entering into this Order.

# Purchase Order Terms and Conditions

December 2020

**(B) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

(a)(1) Seller certifies, to the best of its knowledge and belief, that:

(i) Seller and/or any of its principals:

- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- (B) Have not, within a three-year period preceding this Order, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and
- (D) Have not, within a three-year period preceding this Order, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(ii) Seller has not, within a three-year period preceding this Order, had one or more contracts terminated for default by any Federal agency.

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) Seller will provide immediate written notice to Buyer if Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available, Buyer may terminate this Order for default.

**(C) FAR 52.222-22 Previous Contracts and Compliance Reports\***

Seller represents that if Seller has participated in a previous contract or subcontract

subject to the Equal Opportunity clause (FAR 52.222-26): (a) Seller has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**(D) FAR 52.222-25 Affirmative Action Compliance\***

Seller represents: (a) that Seller has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

**2. Additional Certifications and Representations Applicable to Orders for Non-Commercial Items:**

**(A) FAR 52.230-1 Cost Accounting Standards (CAS) Notices and Certification** (Applies to the extent that Seller is not exempt from CAS requirements. The “Cost Accounting Standards Notices and Certification” in the form provided in FAR 52.230-1 will be completed by Seller. Any Order in excess of \$750,000 will be subject to Cost Accounting Standards Board (48 CFR Chapter 99) requirements, unless an exemption is applicable per 48 CFR Subpart 9903.201-1. Specifically, non-US suppliers are subject to modified CAS coverage: i.e. CAS 401 and 402 only as defined in FAR 52.230-4.)

**(B) FAR 15.403-4 Certificate of Current Cost or Pricing Data:** Seller’s certification that the cost or pricing data (as defined in FAR 2.101 and required under FAR 15.403-4) as submitted is accurate, complete and current. (Applies for any Order exceeding \$2,000,000, unless an exception under FAR 15.403-1(b) applies.)

**(C) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act.** In compliance with 22 C.F.R. 130, neither Seller nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which is to be provided to Buyer under the Order, political contributions, fees or commissions in amounts as specified in 22 C.F.R. 130.9.

**(D) Certification of Toxic Chemical Release Reporting (FAR 52.223-13)\*** (Applies to Orders

exceeding \$100,000.)

**(E) Truth in Negotiations (TINA) - Certified Cost and Pricing Data (Additional Requirements for sole-source Orders exceeding \$ 2,000,000):**

1. Unless exempt under FAR Part 15.403, Seller will submit a FAR Part 15 compliant cost proposal (complying with the instructions in FAR 15.408 Table 15-2) which will be updated throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR 15.406-2 required Certificate of Current Cost or Pricing Data.

**2. Indemnification**

If any price (including profit or fee) negotiated in connection with the Prime Contract between the Prime Contractor and Buyer or any cost that is reimbursable under the Prime Contract is reduced because cost or pricing data furnished by Seller in connection with any proposal submitted by Buyer relating to the Prime Contract or in connection with this Order was not accurate, complete or current, Seller will indemnify Buyer in the amount of said reduction, plus simple interest and penalty equal to the amount of the overpayment, if Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

**3. Contract Changes**

When pricing any contract changes, Seller will submit the cost and pricing for any change or other modification to this Order, which involves increases and/or decreases in costs and profit expected to exceed the threshold for submission of cost or pricing data, and will certify the data accordingly.