

**TERMS AND CONDITIONS FOR COMMERCIAL OFF THE SHELF (COTS) GOODS AT A FIRM FIXED PRICE FOR PURCHASE ORDERS UNDER \$35,000, WITH U.S. DOMESTIC COMPANIES ONLY.****1. Definitions/Acceptance**

- 1.1. **BAE Systems** is the entity specified on the Purchase Order (**PO**). **Contract** means together, in the following order of precedence: (1) the PO and the mandatory flow down clauses included in any attached U.S. Government Flow Down Exhibit(s) as modified by BAE Systems, (2) these Terms and Conditions, and (3) any other incorporated, attached, or referenced exhibit, or other document. **Seller** is the independent contractor specified on the PO that is contracting with BAE Systems. **Work** means all deliverables, materials, and related labor necessary for deliverables under the Contract. **Party** means BAE Systems or Seller. **Parties** means BAE Systems and Seller. Authorized Representatives (**AR**) means the Parties' authorized representatives specified on the PO. **Customer(s)** means any higher tier contractor and/or the U.S. Government.
- 1.2. Seller's acknowledgment, commencement of performance, or acceptance of any payment shall constitute Seller's unqualified acceptance of the Contract.

**2. Warranty of Work**

- 2.1. Seller represents, warrants and agrees that:
- 2.1.1. The Work is new and not used or aged unless so specified on the PO.
  - 2.1.2. The Work strictly complies with the requirements of the Contract, including all specifications set forth or referenced in any PO. Seller will timely notify BAE Systems of changes to the manufacturing process or location, supply base, or other change that affects compliance of the Work.
  - 2.1.3. The Work is free from defects in design, material, manufacture, and workmanship.
  - 2.1.4. The Work is free from liens, licenses, claims, and encumbrances.
  - 2.1.5. The Work is performed by qualified personnel, with diligence, and in accordance with applicable industry quality standards.
  - 2.1.6. The Work is a COTS item as defined by Federal Acquisition Regulation (**FAR**) § 2.101.
  - 2.1.7. The Work strictly complies with all laws applicable to the Work.
  - 2.1.8. The Work does not infringe, violate or misappropriate the rights of any third party.
  - 2.1.9. The Work does not include any open source software or any code governed by an open source software license, except with advance written consent of BAE Systems.
  - 2.1.10. The Work is free from any unauthorized chemical substance pursuant to the Toxic Substances Control Act.
  - 2.1.11. The Work is free of any asbestos mineral fibers.
  - 2.1.12. The Work is free of any known conflict minerals as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations.
- 2.2. The warranties above shall begin upon BAE Systems' delivery of the Work to BAE Systems Customer(s) and shall extend for a period of one year.
- 2.3. All warranties shall run to the benefit of BAE Systems, its successors, and Customer(s).
- 2.4. If the Work contains any manufacturer's or commercial warranties, Seller hereby grants and assigns such warranties to BAE Systems.
- 2.5. If Seller delivers nonconforming Work, or a non-conformity appears within the warranty period, BAE Systems shall return the nonconforming Work to Seller, and Seller shall reimburse BAE Systems for such shipping costs and, at BAE Systems' direction, promptly repair, replace, re-perform and deliver the Work at no cost to BAE Systems. If repair, replacement or re-performance of Work is not available to meet BAE Systems' schedule, BAE Systems may elect to repair or have a third party repair the Work at Seller's expense, or procure substitute Work from a third party at Seller's expense.
- 2.6. Seller shall not re-tender rejected Work (or Work returned from another Seller customer) without disclosing in writing the corrective action taken, and receiving written approval from BAE Systems to deliver the Work.
- 2.7. If the deliverable under this Contract is or contains Electronic Parts, the **Counterfeit Electronic Parts Exhibit** shall apply to this Contract.
- 2.8. Seller shall flow down the requirements of Section 2 of this Contract, including any applicable Exhibits, to all subcontractors supporting the Contract, and require that all subcontractors supporting the contract incorporate such requirements in all lower tier subcontracts. Breach of this Section 2 is a material breach of the Contract and Seller shall notify BAE Systems immediately upon becoming aware of any possible breach.

**3. Delivery/Timely Performance**

- 3.1. Delivery and Risk of Loss is FOB Destination. Seller shall pack all Work and include in all shipments any applicable Safety Data Sheets (SDSs) and a complete packing list that specifies the BAE Systems' Contract number and the date of shipment.
- 3.2. Seller's timely performance is a critical element of the Contract and time is of the essence. Seller shall notify Buyer of any delay, provide a written recovery schedule, and expedite shipping at Seller's expense. Seller shall not deliver Work early, unless authorized in writing by BAE Systems' AR.

**4. Prices/Payment**

- 4.1. Seller shall be responsible for, and Seller's prices shall be inclusive of, all applicable federal, state, local, and international taxes, duties, tariffs, licenses, export/import authorizations, permits, and similar fees imposed by any government; such charges shall be identified on Seller's invoice.
- 4.2. BAE Systems shall pay Seller using electronic funds transfer within 45 days of the receipt of Seller's proper invoice, or receipt of the Work (whichever is later). BAE Systems has the right to offset any amount, or reduce overpayments or amounts not properly payable to Seller.
- 4.3. Seller shall provide a W-9 if requested by BAE Systems.

**5. Confidentiality**

- 5.1. Seller shall protect and keep confidential BAE Systems' proprietary information, including but not limited to specifications, drawings, computer programs, designs, and other technical information which BAE Systems protects from public disclosure. BAE Systems' advance written consent is required prior to Seller's disclosure, public release, or any comment on BAE Systems' proprietary information, the Contract or its existence generally, or the contents of any terms and conditions in the Contract. The terms of the Contract does not alter any valid nondisclosure or proprietary information agreement between the Parties, which shall apply to any exchange of proprietary or confidential information made under the Contract.
- 5.2. Seller shall not communicate with BAE Systems' Customer with respect to the Contract, unless, and to the extent, required by law or as specifically directed by BAE Systems.

**6. Compliance/ Representations**

- 6.1. Seller shall comply with all laws applicable to its performance of the Contract.
- 6.2. In addition to the above, Seller represents, warrants and agrees that:
- 6.2.1. Seller and Work complies with all applicable laws worldwide preventing slavery and human trafficking.
  - 6.2.2. Seller complies with all United States export control laws and regulations applicable to the Work and performance of the Contract, BAE Systems' or its Customer's export controlled data. Seller shall identify any Work that is subject to U.S. export regulations and provide BAE Systems with the country of origin of the Work, the export classification of Work, and notice of any classification change.
  - 6.2.3. Seller complies with the BAE Systems', or comparable, **Global Code of Conduct**, **Supplier Principles**, and **Sustainable Solutions**, located at the following web addresses: <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states> and <https://www.baesystems.com/en-our-company/corporate-responsibility/sustainable-solutions>.
  - 6.2.4. Seller complies with the equal employment opportunity requirements of Title 41 of the Code of Federal Regulations (C.F.R.) and the employee notice requirements of Title 29 of the C.F.R.

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- 6.2.5. Seller has adequate controls in place to protect against Procurement Integrity Act violations. Seller's officers, directors, employees, agents, contractors, lower-tier subcontractors, or other related entities shall not provide BAE Systems with any information in violation of the Act.
- 6.2.6. Upon BAE Systems' request, Seller shall complete the **Cyber Security Supplier Questionnaire** and comply with any responses or agreed actions at its own expense. Seller shall employ appropriate tools and practices to protect BAE Systems' data and shall advise BAE Systems within 48 hours of a cyber-attack in which BAE Systems' data may have been compromised.
- 6.2.7. Seller shall be bound by the terms of the following documents if attached: **(1) U.S. Government Flow Down Exhibit(s), (2) Counterfeit Parts Exhibit, (3) Furnished/Acquired/Fabricated Property Exhibit, (4) Cyber Security Supplier Questionnaire, (5) Cloud Security Exhibit and/or (6) Ship Repair, Inc. Addendum.**

**7. Intellectual Property**

- 7.1. To the maximum extent under law, BAE Systems maintains all right, title, and interest in and to all intellectual property and proprietary information not expressly licensed herein. To the extent BAE Systems' intellectual property is shared with Seller for the purpose of the Work, BAE Systems grants Seller a limited, revocable, non-sublicensable, paid-up, royalty-free license to use the intellectual property for the sole purpose of performing the Contract.
- 7.2. Seller grants BAE Systems a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license to enable BAE Systems to use any intellectual property incorporated into or read upon the Work, to the extent necessary for BAE Systems to sell, offer for sale, or use the Work.
- 7.3. If an injunction is obtained against BAE Systems' use of the Work as a result of infringement, violation, or misappropriation of the intellectual property of any third party, in addition to all other remedies available, Seller shall procure for BAE Systems and BAE Systems' Customer the right to continue using the Work, or replace or modify the Work so it becomes non-infringing.

**8. Liability/Indemnification**

- 8.1. Seller shall be liable for all of BAE Systems' losses, including but not limited to costs, penalties, damages, liabilities, fees, and expenses arising out of or related to Seller's (including its directors, officers, employees, suppliers and subcontractors at any tier) Work and performance of the Contract (**Losses**).
- 8.2. Seller's liability for such Losses shall be capped at three times the value of any PO that includes the Work related to which the liability arose, except that no cap shall apply to Seller's liability resulting from Seller's violation of law, Seller's infringement, violation or misappropriation of the rights of any third party, a security breach of Seller resulting in BAE Systems' data being compromised, Seller's provision of counterfeit or inauthentic Work, Seller's provision of Work containing malicious technology, or Third Party Claims (as defined hereafter) arising out of or related to the Contract. Seller shall indemnify BAE Systems, its directors, officers, employees, and agents from and against any and all Losses, resulting from claims, causes of action, settlements and/or litigations (**Third Party Claims**), regardless of cause, arising out of or related to the Contract. BAE Systems' rights and remedies in the Contract are cumulative and in addition to any other rights and remedies in law or equity.
- 8.3. BAE Systems shall have no liability for any matter arising under or related to the Contract, other than for breach of its payment obligations. **In no event shall BAE Systems, its employees, agents or representatives be liable for any special, incidental, indirect, punitive, or consequential damages of any kind, or any lost or anticipated profits or unabsorbed indirect costs or overhead, whether such remedy is sought in contract, tort, or otherwise.**

**9. Insurance/Entry onto Premises**

- 9.1. Seller shall maintain (and require its subcontractors at any tier to maintain) customary insurance. In the event that Seller, its employees, agents, or subcontractors (at any tier) enter the site(s) of BAE Systems or BAE Systems' Customer for any reason in connection with the Contract, Seller and its subcontractors (at any tier) shall procure and maintain worker's compensation.
- 9.2. All insurance maintained hereunder shall be considered primary and exclusive. All Seller's personnel, agents or subcontractors that enter a BAE Systems' or BAE Systems' Customer's premise shall be a "U.S. Person" per 22 C.F.R 120.15 and comply with all BAE Systems' security protocols and on-premises rules.

**10. Disputes**

- 10.1. The Contract, and all actions (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to the Contract, shall be governed by and enforced in accordance with the laws of the State of Delaware (excluding any conflict of law provisions); except that any provision in the Contract that is incorporated in full text, incorporated by reference or is substantially based on the FAR, Defense Federal Acquisition Regulation Supplement (**DFARS**), or any other agency regulation that implements or supplements the FAR, shall be construed according to the U.S. federal common law of government contracts.
- 10.2. The Parties agree to timely notify each other of any claim or dispute arising under the Contract. Seller shall continue working diligently during any dispute.
- 10.3. The Parties waive all objection and right to contest the subject matter jurisdiction, personal jurisdiction, and/or venue of a Delaware state or federal court, to decide any claims brought by any party in connection with or arising under the contract. **The Parties waive any right to trial by jury.**

**11. Term and Termination**

- 11.1. This Agreement commences from Contract acceptance through final payment, unless earlier terminated under this Section.
- 11.2. BAE Systems may terminate the Contract in accordance with applicable termination rights specified in the U.S. Government Flow Down Exhibit(s), if attached.
- 11.3. The Parties may terminate the Contract upon mutual written agreement.
- 11.4. Upon a Seller's material breach of the Contract, BAE Systems may terminate the Contract with 5 days' written notice. BAE Systems may, in its sole discretion, elect to accept (a) completed Work at the Contract price, (b) partially completed Work at a reasonable price, or (c) Work in progress at actual cost.

**12. General Clauses**

- 12.1. **Assignment:** BAE Systems may freely assign the Contract. Seller shall not assign rights or delegate duties under the Contract without advance written consent of BAE Systems. A change of control of Seller, by operation of law or otherwise, shall constitute an impermissible assignment.
- 12.2. **Entire Agreement:** The Contract is the entire agreement of the Parties and supersedes all other discussions or agreements on this subject. BAE Systems expressly rejects any additional or different terms proposed by Seller. Amendments or changes to the Contract shall be in writing and must reference the Contract and be signed by each Party's AR. Nothing in these Terms and Conditions amends or supersedes any master agreement, long term supply agreement, proprietary information agreement or indemnity agreement between the Parties.
- 12.3. **Notices:** All notices must be sent to the applicable Party's AR. Email constitutes notice only if receipt is confirmed by a reply email (not a read receipt or automatic reply).
- 12.4. **Records:** Seller shall retain all records related to the Contract for five years from the date of final payment receipt (or such longer period as required by law). Seller shall provide BAE Systems and its Customer(s) (if authorized by BAE Systems) reasonable access to such records.
- 12.5. **Severability:** In the event any provision or clause of the Contract conflicts with governing law, or a court of competent jurisdiction holds invalid any such provision or clause of the Contract, such provision or clause shall be deemed to be modified to reflect as nearly as possible the Parties' intent. The remainder of the Contract shall remain in full force and effect.
- 12.6. **Survival:** If the Contract expires or is terminated, Seller shall not be relieved of the obligations contained in (1) U.S. Government Flow Downs; (2) the following Sections: Warranty of Work, Confidentiality, Compliance/Representations, Intellectual Property, Liability/Indemnification, Insurance, Governing Law/Disputes, and General Clauses; (3) any obligation arising out of termination or expiration; and (4) any Exhibits attached hereto.
- 12.7. **Third Parties:** The Contract does not create any right, obligation or recourse against any third party (including any BAE Systems' Customer).
- 12.8. **Waiver:** BAE Systems' failure to enforce any provision(s) of the Contract shall not be construed as a waiver of the requirement or a waiver of the right to enforce each and every such provision(s).