

## GENERAL PROVISIONS FOR COMMERCIAL SUBCONTRACTS / PURCHASE ORDERS

It is agreed by LOCKHEED MARTIN and SELLER that SELLER shall supply and LOCKHEED MARTIN shall acquire the Work on the following terms and conditions.

### Definitions and Interpretation

1. In this Contract, unless the context requires otherwise:

"Background Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated by or on behalf of SELLER otherwise than under this Contract;

"Business Day" means a day other than a Saturday, Sunday or public holiday in the Relevant Jurisdiction;

"Confidential Information" means the terms of this Contract and any information disclosed by one Party to the other Party under this Contract, whether in writing, orally, visually, in the form of samples, computer software, regardless of media, models or otherwise provided that such written information is clearly and conspicuously marked as Confidential Information or Proprietary Information and that such oral, visual or other non-written information is designated as Confidential Information at the time of disclosure. Confidential Information excludes any information:

Confidential Information excludes any information:

- (a) that a Party can show was already known to, in the rightful possession of or independently developed by that Party in good faith and free of any obligation of confidence;
- (b) that a Party can show is in the public domain otherwise than by a breach of this Agreement or other obligation of confidence; or
- (c) is received by a Party from an independent third party who is lawfully in possession and has the power and authority to disclose the information;

"Contract" means the Purchase Order and these terms and conditions;

"Foreground Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER;

"Force Majeure Event" means an event beyond the reasonable control of SELLERrecipient (excluding the amount payable as G

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- b. the costs of any packaging, crating, marking, handling, insurance and any other costs and charges.
24. GST
- a. Terms defined in the GST Act have the same meaning when used in this clause, or in the definition of "GST Amount" unless expressly stated otherwise.
  - b. Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Contract has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
  - c. If any GST is payable on any taxable supply made under this Contract to the recipient by the supplier ("Supplier"), the recipient must pay the GST Amount to Supplier on the earlier of:
    - i. the time of making payment of any monetary consideration on which the GST is calculated; and
    - ii. the issue of an invoice relating to the taxable supply.
  - d. The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated. Supplier must provide as a precondition for payment by the recipient of the GST Amount, a tax invoice or a document that the Commissioner will treat as a tax invoice.
  - e. The amount recoverable on account of GST under this clause by Supplier will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the recipient under this clause.
  - f. If either party is required to pay, reimburse or indemnify the other for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this Contract, the amount must be reduced by the amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit, or other like offset.

#### **Warranty**

25. SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship and shall be fit for purpose and of satisfactory quality. This warranty shall begin upon final acceptance and, unless otherwise specified in the Purchase Order, extend for a period of one (1) year. If any nonconforming Work is identified by LOCKHEED MARTIN then without prejudice to any other remedy of LOCKHEED MARTIN, SELLER, at LOCKHEED MARTIN's option, shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work, return of nonconforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or re-performance of Work is not carried out promptly, LOCKHEED MARTIN may elect to return, re-perform, repair, replace, or reprocore the non-conforming Work at SELLER's expense. All warranties shall enure to the benefit of both LOCKHEED MARTIN and its customers.

#### **COUNTERFEIT WORK**

26. **Counterfeit work**
- a. The following definitions apply to this clause:

"Counterfeit Work" means Work that is or contains unlawful or unauthorised reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorised aftermarket manufacturer. Unlawful or unauthorised substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

- b. SELLER shall not deliver Counterfeit Work or Suspect Counterfeit Work to LOCKHEED MARTIN under this Contract.
- c. SELLER shall only purchase products to be delivered or incorporated as Work to LOCKHEED MARTIN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorised distributor chain. SELLER may use another source only if (i) the foregoing sources are unavailable, (ii) SELLER's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) SELLER obtains the advance written approval of LOCKHEED MARTIN.
- d. SELLER shall maintain counterfeit risk mitigation processes in accordance with industry recognised standards and with any other specific requirements identified in this Contract.
- e. SELLER shall immediately notify LOCKHEED MARTIN with the pertinent facts if SELLER becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by LOCKHEED MARTIN, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. SELLER, at its expense, shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.
- f. This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Contract addressing the authenticity of Work.
- g. In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation LOCKHEED MARTIN's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of this Contract.
- h. SELLER shall include this clause 26 or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LOCKHEED MARTIN.

#### **Excusable Delay**

27. Subject to SELLER complying with its obligations pursuant to clause 28, SELLER shall be excused from, and shall not be liable for, failure of performance of its obligations under this Contract to the extent that such failure is due to a Force Majeure Event.
28. In order to be excused from performance under clause 27 SELLER shall submit, within ten (10) days of the start of the Force Majeure Event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of SELLER and not due to its negligence or fault and what efforts SELLER will make to minimize the length of delay. SELLER shall submit within ten (10) days of the end of the Force

Majeure Event a written notice stating the impact to the schedule and evidence justifying the length of the delay.

29. If a delay due to a Force Majeure Event extends for thirty (30) days or more this Contract may be terminated by LOCKHEED MARTIN without additional cost and without liability to SELLER.

#### **Stop Work**

30. SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received LOCKHEED MARTIN, or for such longer period of time as the parties may agree and shall take all reasonable steps to mitigate further minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
31. Within such period, LOCKHEED MARTIN shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles in clause 18 shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

#### **Intellectual Property**

32. Ownership of all Foreground Information shall vest in LOCKHEED MARTIN on creation. SELLER hereby assigns and shall assign all right, t

37. The obligations of confidence contemplated by clause 36 do not apply in relation to Confidential Information of the other Party to the extent that the Confidential Information is required to be disclosed under applicable law or the rules of a stock exchange, but only if the disclosing party has given the other party all available notice to enable the other party to attempt to remove that requirement and the disclosing party only discloses the minimum information required.
38. Except to the extent required by law, SELLER (or any subcontractor of SELLER) shall not make any public release or confirmation or denial of same with respect to this Contract or the subject matter hereof without

employed by or acting for or on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the customer in any commercial transaction or in any governmental matter or securing any improper advantage to assist LOCKHEED MARTIN or SELLER in obtaining or retaining business or directing business to any person.

- c. SELLER shall notify LOCKHEED MARTIN it is becomes aware that any owner, partner, officer, director or employee of SELLER or of any parent or subsidiary company of SELLER is or becomes an official or employee of the government or of an agency or instrumentality of a government or a candidate for political office or a political party official during the term of this Contract.
- d. SELLER has not made and will not make, either directly or indirectly, any improper payments, including but not limited to facilitation payments, gratuities or kickbacks.
- e. SELLER has established and will maintain an effective business ethics and compliance program and procedures to prevent corruption and ensure compliance with applicable laws and regulations.
- f. SELLER will promptly disclose to LOCKHEED MARTIN together with all pertinent facts any violation, or alleged violation, of applicable anticorruption laws and regulations in connection with the performance of this Contract.

44. SELLER shall include clauses 42 to 44 or equivalent provisions in any subcontracts under this Contract.

#### **Retention of Records**

45. Unless a longer period is specified in this Contract or by law, SELLER shall retain all records related to this Contract for three (3) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to LOCKHEED MARTIN or its customer upon request.

#### **Default and Termination**

46. In the event that SELLER:

- a. becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver appointed over any of its assets or commences to be wound-up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction); or
- b. fails to perform or observe any of the conditions of this Contract and fails to remedy the same within ten (10) days after receipt of notice from LOCKHEED MARTIN requiring the same to be remedied,

then LOCKHEED MARTIN may by written notice to SELLER forthwith terminate this Contract or any specified part thereof.

47. Upon termination in accordance with clause 46, and with respect to that part of this Contract terminated:

- a. no further sums shall become due to SELLER save in respect to Work delivered and accepted prior to termination, payment for which shall be postponed at LOCKHEED MARTIN's election, until such time LOCKHEED MARTIN claims against SELLER under this Contract shall have been finally established and quantified;
- b. LOCKHEED MARTIN shall be entitled to procure from any alternative source the supply of Work in replacement of Work not delivered prior to the termination. Any additional costs incurred by LOCKHEED MARTIN in finding and arranging such alternative source shall be sums due and owing by SELLER to LOCKHEED MARTIN; and
- c. Seller shall continue all Work not terminated.

The provisions of this clause shall be without prejudice to any other remedy LOCKHEED MARTIN may have under this Contract or any applicable law.

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48. LOCKHEED MARTIN may terminate all or part of this Contract for its convenience by giving written notice to SELLER. Upon termination in accordance with this clause 48:
- a. SELLER must immediately: (i) cease all work; (ii) prepare and submit to LOCKHEED MARTIN an itemization of all completed and partially completed deliverables and services; (iii) deliver to LOCKHEED MARTIN any and all Work completed up to the date of termination at the agreed upon prices; and (iv) deliver upon request any Work in process;
  - b. In the event LOCKHEED MARTIN terminates for its convenience after performance has commenced and the parties cannot agree upon a reasonable restocking or service charge, LOCKHEED MARTIN will compensate SELLER for the actual and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate LOCKHEED MARTIN's liability under this clause;
  - c. In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination ; and
  - d. SELLER shall continue all Work not terminated.

**Dispute**

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- b. by reason of property damage or loss or personal injury to any person caused in whole or in part by the acts or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors; or
  - c. out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
57. SELLER shall not assign any part of this Contract without LOCKHEED MARTIN's prior written consent. SELLER shall be responsible for all Work performed or supplied by any subcontractors under this Contract.
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