



**ELBIT SYSTEMS OF AMERICA, LLC**  
**REPRESENTATIONS, WARRANTIES, TERMS, AND CONDITIONS FOR SUBCONTRACTS/PURCHASE**  
**ORDERS IN SUPPORT OF FOREIGN MILITARY FINANCING OF DIRECT COMMERCIAL CONTRACTS**  
**(“FMF DCC Addendum”)**  
**Elbit Systems of America FMF-1 November 2021**

**Supplier Representations and Warranties for Foreign Military Financing of Direct Commercial Contracts**

1. Supplier is aware that Buyer is purchasing Goods for use in a Foreign Military Financing (FMF) contract, subject to Defense Security Cooperation Agency’s (DSCA) Guidelines for Foreign Military Financing for Direct Commercial Contracts (the “Guidelines”)<sup>1</sup>. Supplier therefore acknowledges that Buyer’s purchase is conditioned on: (1) Supplier’s compliance with the applicable Guidelines, and (2) the accuracy of the assertions made in Supplier’s First Tier Sub-Contractor’s Certification and Agreement with DSCA<sup>2</sup> or similar written factual assertions (Supplier’s Certification).

Supplier further acknowledges that Buyer may suffer significant damage from any inaccuracy in, or revision to, Supplier’s Certification(s). Consequently, and without limitation by the foregoing, Supplier represents and warrants the accuracy of all US-content assertions contained in its Supplier Certification(s) and shall indemnify Buyer against any and all losses incurred by Buyer, as calculated below, resulting from any inaccuracy in or revision to Supplier’s Certification(s) or failure to comply with the DSCA Guidelines. Notwithstanding any other limitation of Supplier’s liability contained in the Agreement, Supplier’s indemnity described in this Section shall be calculated by reducing Seller’s purchase order price by the same dollar amount that Buyer’s FMF contract price is reduced as a result of the inaccurate or revised Supplier Certification(s). Supplier’s indemnity shall not exceed the full purchase price listed in the purchase order(s) containing the inaccurate or revised Supplier Certification(s).

In the event the above indemnity is exercised, Buyer may apply a credit against Supplier’s invoice(s) in the indemnified amount, or, in the event Buyer has already paid the invoiced amount, Supplier shall refund the Buyer the calculated amount promptly, but in no event later than sixty (60) days from receipt of notice.

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<sup>1</sup> ‘Guidelines for Foreign Military Financing of Direct Commercial Contracts’, *Foreign Military Financing of Direct Commercial Contracts (FMF DCC)*, Defense Security Cooperation Agency, March 2017, [Foreign Military Financing of Direct Commercial Contracts \(FMF DCC\) | Defense Security Cooperation Agency \(dscamil\)](#)

<sup>2</sup> ‘First Tier Sub-Contractor’s Certification and Agreement with DSCA’, *Foreign Military Financing of Direct Commercial Contracts (FMF DCC)*, Defense Security Cooperation Agency, March 2017, [Foreign Military Financing of Direct Commercial Contracts \(FMF DCC\) | Defense Security Cooperation Agency \(dscamil\)](#)



## Elbit Systems Of America FMF DCC Subcontract Terms & Conditions

2. Supplier agrees that any shipping costs under the subcontract will be paid only to companies of United States registry (i.e., US Flag vessels), unless such shipping costs have been identified to and approved in writing by Elbit Systems of America prior to award of the subcontract for payment with foreign government national funds. Supplier agrees that amounts billed for shipping shall be only the cost for shipping the items provided under the terms of the subcontract. Freight forwarder services are not authorized for FMF funding unless specifically authorized by Elbit Systems of America.
3. Supplier agrees to comply and maintain compliance in all respects with the DSCA Guidelines and with the Supplier's First Tier Sub-Contractor's Certification and Agreement with DSCA. Supplier agrees to maintain compliance with and support Elbit Systems of America's compliance with its Contractor's Certification and Agreement<sup>3</sup>, including but not limited to, providing subcontract details, records, and certifications that are necessary to demonstrate compliance with DSCA Guidelines.
4. Supplier shall submit to Elbit Systems of America a properly completed and executed First Tier Sub-Contractor's Certification and Agreement (FTSCA) for each subcontract with Elbit Systems of America. Supplier shall notify and submit an amended or modified FTSCA to Elbit Systems of America within a reasonable amount of time, not to exceed sixty (60) days, when the supplier becomes aware of new information that makes it necessary for the supplier to change, modify, or update assertions within its FTSCA of record.
5. Supplier agrees that it will identify and calculate the amount of U.S., Non-U.S., and Host Nation content of items and/or services provided under its subcontract(s) with Elbit Systems of America through the use of methods that are acceptable and consistent with DSCA Guidelines.

## Foreign Military Financing of Direct Commercial Contracts – Flow Downs

6. Elbit Systems of America is purchasing Goods or services for use in a Direct Commercial Contract (DCC) funded with Foreign Military Financing (FMF), and ***United States Government (USG) funds will be used to finance such subcontract, and that acceptance of the subcontractor order will constitute acknowledgment of such notification of USG financing<sup>4</sup>.***
7. Supplier agrees that, except for those subcontracts that qualify for an exemption under Paragraph 6 of the FTSCA with DSCA, authorized representatives of the Government of

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<sup>3</sup> 'Contractor's Certification and Agreement', *Foreign Military Financing of Direct Commercial Contracts (FMF DCC)*, Defense Security Cooperation Agency, March 2017, [Foreign Military Financing of Direct Commercial Contracts \(FMF DCC\) | Defense Security Cooperation Agency \(dscamilitary.com\)](https://www.dscamilitary.com/Foreign-Military-Financing-of-Direct-Commercial-Contracts-FMF-DCC)

<sup>4</sup> 'First Tier Sub-Contractor's Certification and Agreement', page 3: Paragraph 8



the United States shall have access to and the right to examine, for a period of three (3) years following the date of the final payment to Elbit Systems of America, any of the Supplier's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract.<sup>5</sup>

8. ***Supplier understands and acknowledges that acceptance and implementation of the subcontract constitutes a declaration and agreement by the principal executive officers of the subcontractor that no bribes, rebates, gifts, kickbacks, or gratuities to secure the Purchase Agreement or the subcontract, or for favorable treatment under such agreements, or for any other purpose relating to the Purchase Agreement or the subcontract have been or will be directly or indirectly offered or given to, or have been or will be arranged with officers, officials or employees of the Purchaser by the subcontractor, its employees or agents<sup>6</sup>.***
9. ***Supplier agrees that, except for those subcontracts that qualify for an exemption under Paragraph 6 of the FTSCA with DSCA, it will disclose to Elbit Systems of America and DSCA the: 1) recipient(s) 2) amount(s) paid or to be paid, and 3) amounts included in the subcontract of any commission, contingent fees, or similar compensation paid or to be paid in any way (to include payments to a bona fide employee or a bona fide commercial or selling agency), whether in cash or in kind, directly or indirectly related to the subcontract.***
  - a. ***Certifies that the subcontract price does not include commissions, contingent fees, or similar compensation paid or promised to any person for the purpose of soliciting or securing the Purchase Agreement, unless such payments have been identified to and approved in writing by the Purchaser prior to contract award for payment with repayable FMF credit or with the Purchaser's national funds.***
  - b. ***Certifies that any commissions, contingent fees, or similar compensation paid or promised by the Sub-Contractor's to any person in relation to soliciting the subcontract were not in violation of U.S. law or regulations.***
  - c. ***Agrees to include within every subcontract or order under the Purchase Agreement (except those exempted under paragraph 6) prominently displayed contract clause(s) requiring that the subcontractor provide the disclosures and certifications set forth in paragraph 13 and 13 (a and b) of the FTSCA<sup>7</sup>.***
10. **Supplier agrees that, except for those subcontracts that qualify for an exemption under Paragraph 6 of the FTSCA with DSCA, it will identify and consent to the disclosure of the following accounts to, and at the request of, the U.S. Department of Defense, or the U.S. Department of Justice, or a U.S. Federal Grand Jury:**

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<sup>5</sup> 'First Tier Sub-Contractor's Certification and Agreement', page 2: Paragraph 6

<sup>6</sup> 'First Tier Sub-Contractor's Certification and Agreement', page 3: Paragraph 10

<sup>7</sup> 'First Tier Sub-Contractor's Certification and Agreement', page 5: Paragraph 13



- d. (1) Accounts wherever located in the name of Supplier; and
- e. (2) Accounts located outside the United States in the name of the principal executive officers of Supplier (or in the name of any nominees of such individuals) who have been personally and substantially involved in the Agreement.
- f. For purposes of clarity, the term "consent to the disclosure," as used in this paragraph, includes agreement to provide consent documents authorizing the disclosure of such information upon request<sup>8</sup>.

*All rights and remedies provided in this Addendum are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in the Agreement or any other agreement between the Parties or otherwise.*

*This Addendum is entered into voluntarily by Buyer and Supplier and is incorporated into the [Standard Terms and Conditions] agreed to by the Parties on date of subcontract placement. The terms of this Addendum, as well as any other provision necessary to give proper effect to its intent, shall survive the termination or expiration of the [Agreement], and shall extend through the expiration period of Buyer's Certification and Agreement with DSCA.*

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<sup>8</sup> 'First Tier Sub-Contractor's Certification and Agreement', page 5: Paragraph 18