



**General Provisions**  
**For Purchase Orders/Subcontracts issued by**  
**Elbit Systems of America, LLC and its U.S. Subsidiaries**  
**Rev. 5-Feb-14**

**1. THE CONTRACT**

These General Provisions and all other terms and conditions set forth in the purchase order, together with any documents incorporated herein or on the purchase order by reference, collectively constitute the "Contract" for Buyer's procurement from Seller of the goods, services and other deliverables (collectively, the "Deliverables") described in the Contract. Seller's acceptance in any manner, including commencement of performance, is an acceptance of the Contract as written, regardless of any different or additional terms and conditions submitted by Seller, which are hereby rejected.

**2. DEFINITIONS**

- a. "Buyer" is the legal entity identified on the purchase order.
- b. "Buyer's Authorized Representative" is the person authorized to execute the Contract, make changes to the Contract, and otherwise bind Buyer in connection with the Contract.
- c. "Seller" is the legal entity identified on the purchase order.
- d. Unless otherwise specified, Buyer's "customer" is to be read as including Buyer's direct customer and, when Buyer's direct customer is not the end user, all higher-tier contractors and the ultimate end user, including but not limited to the U.S. Government.
- e. Unless otherwise specified, "days" are to be read as calendar days.

**3. CONTRACT DIRECTION**

- a. Only Buyer's Authorized Representative has authority on behalf of Buyer to make changes to this Contract or otherwise bind Buyer in connection with this Contract.
- b. The identity of Buyer's Authorized Representative will be indicated on the face of the purchase order, or by Buyer's subsequent written notification, making specific reference to this clause of this Contract.
- c. All changes and amendments must be in writing, specifically identified as a change or amendment, and executed by Buyer's Authorized Representative.
- d. Buyer's engineering, program and technical personnel may from time to time exchange information with Seller's personnel, including but not limited to rendering assistance, holding reviews, giving technical advice, clarifying requirements, or correcting mistakes and misunderstandings. No such exchange shall be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment, except as specifically authorized by Buyer's Authorized Representative in accordance with the Changes clause.
- e. Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to Buyer's Authorized Representative.

**4. PRICE**

The prices of Deliverables are set forth on the purchase order. Unless otherwise specified, prices for goods are FOB destination and include all packaging and transportation costs to the delivery location, insurance, customs duties, fees and taxes, except for applicable sales tax. Sales tax must be separately stated on Seller's invoice, but shall not be charged if Buyer has furnished a valid exemption certificate or other evidence of exemption. No increase in prices is effective, whether



due to increased material, labor or transportation costs or otherwise, without Buyer's Authorized Representative's prior written consent.

#### **5. DELIVERY SCHEDULE AND QUANTITIES**

- a. Time is of the essence, and Seller shall strictly adhere to the delivery schedule specified in the purchase order of this Contract. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible. Notwithstanding Seller's notification and recovery plan, Buyer is not obligated to accept Seller's recovery plan, and Buyer does not waive any rights it otherwise has regarding late delivery.
- b. Seller shall not deliver goods prior to the scheduled delivery dates unless authorized by Buyer's Authorized Representative in writing.
- c. Seller shall not deliver goods in excess of the purchase order quantities unless authorized by Buyer's Authorized Representative in writing. In the event of excess delivery without Buyer authorization, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess.

#### **6. PACKING, SHIPPING AND DELIVERY LOCATION**

- a. Seller shall pack goods in accordance with Buyer's instructions and common carrier requirements to prevent damage. Buyer may charge Seller for damage resulting from improper packing.
- b. Unless the Contract specifies shipping terms other than FOB destination, then in addition to any other shipping instructions, Seller shall forward goods freight prepaid to the delivery location shown on the purchase order. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for the goods until the goods are delivered and the Buyer takes possession at the destination.
- c. If the Contract specifies FOB origin (place of shipment), then Seller shall ship in accordance to Buyer's shipping instructions. For goods shipped within the United States, Seller shall make no declaration concerning the value of the goods except on goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Upon Buyer's request, Seller will identify packaging charges showing material and labor costs for container fabrication.
- d. For each shipment of goods, Seller shall provide Buyer, in writing, advance warning and notice (in addition to including appropriate labels on goods, containers and packing) of any hazardous or restricted material that is an ingredient or a part of the shipment, together with special handling instructions to advise logistics providers, handlers of the goods and personnel of how to exercise care and precaution to comply with applicable laws and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing.
- e. In the event Seller ships goods from outside the customs territory of the United States, the goods will be imported under the terms of sale DDP Buyer facility Incoterms 2010. Seller shall communicate its customs clearance instructions to its International Third-Party supplier prior to the goods' arrival into the United States to avoid any delays in delivery to Buyer. Under no circumstances is Buyer to be listed as the importer of record (or consignee for shipments delivered via courier) on customs documents for any orders shipped directly to Buyer from a



foreign location and Seller expressly agrees to accept all liability associated with said customs entries for any such orders.

## **7. CHANGES**

- a. Buyer's Authorized Representative may at any time, in writing, and without notice to sureties, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under its contracts; (vii) description of services to be performed; and (viii) place and time of performance of services. Seller shall comply promptly with such written direction.
- b. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease.
- c. If Seller intends to assert a claim for a price or schedule adjustment, Seller must deliver to Buyer a notice within twenty (15) days, and deliver a fully supported proposal to Buyer within forty-five (45) days, after Seller's receipt of Buyer's change direction.
- d. If Seller believes that conduct or circumstances other than Buyer's written change order constitutes a change, Seller must notify Buyer immediately after it knows of such conduct or circumstances. Seller shall be entitled to a price adjustment as a result of such change only for costs incurred (i) after Seller's notification and (ii) after receipt of Buyer's Authorized Representative's written instructions to proceed. The amount of such price adjustment, as well as any schedule adjustment, shall be negotiated.
- e. Buyer may, at its sole discretion, consider any claim regardless of when asserted.
- f. Seller has the burden to support any claimed adjustments in price or schedule. Further, Buyer shall have the right to verify the amount of Seller's claim in accordance with the Financial Records and Audit Article of this Contract. Failure of the Parties to agree upon any adjustment shall be handled as a Dispute and shall not excuse Seller from performing promptly in accordance with Buyer's direction.
- g. If Seller seeks the cost of property made obsolete or excess by a change, Seller is obligated to mitigate such costs, and Buyer may direct the disposition of the property.

## **8. SUSPENSION OF WORK**

- a. Buyer's Authorized Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed one hundred (100) days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" Article of this Contract; (iii) terminate this Contract in accordance with the "Termination for Default" Article of this Contract if grounds for default exist; or (iv) extend the stop work period.
- b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within fifteen (15) days after the suspension is canceled.



## **9. TERMINATION FOR CONVENIENCE.**

- a. Buyer's Authorized Representative, by written notice, may terminate this Contract for convenience at any time, in whole or in part, without cause, and such termination shall not constitute a default. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer shall have all rights accruing both at law and in equity as of the date of termination, including Buyer's right to title and possession of any goods paid for. Buyer may take immediate possession of all work for which Seller seeks reimbursement.
- b. If this Contract is terminated as a result of the termination for convenience of a U.S. Government Contract and if an applicable U.S. Government termination for convenience clause is incorporated by reference into this Contract, (i) the rights, duties, and obligations of the parties shall be determined in accordance with that clause and (ii) determinations by the U.S. Government that are binding on Buyer shall be binding on Seller. If no applicable U.S. Government termination for convenience clause is incorporated by reference into this Contract, the rights, duties, and obligations of the parties shall be determined as set forth in paragraph "a" of this Article.

## **10. TERMINATION FOR DEFAULT**

- a. Buyer's Authorized Representative may, by written notice of default to Seller, terminate this Contract in whole or in part, said termination to be effective immediately, if (i) Seller fails to deliver the Deliverables within the time specified in this Contract or (ii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
- b. Buyer's Authorized Representative may, by written notice of default to Seller, terminate this Contract in whole or in part, said termination to be effective ten (10) days after Seller's receipt of said notice, if (i) Seller fails to perform any other Contract provisions or fails to make progress so as to endanger performance of this Contract and (ii) within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed cure plan that is acceptable to Buyer.
- c. Seller shall continue work not terminated.
- d. Buyer may require Seller to transfer title and deliver to Buyer any completed goods. Buyer shall pay the price set forth in this Contract for completed goods or services delivered and accepted.
- e. Buyer may require Seller to transfer title and deliver to Buyer any partially completed goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights that Seller produced or acquired for the terminated portion of this Contract. At Buyer's direction, Seller shall also preserve property in its possession in which Buyer or its customer has an interest. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, but without profit, for items delivered to Buyer under this paragraph and for Seller's cost of preserving property as directed by Buyer.
- f. Buyer may reprocur goods or services similar to those terminated, and Seller shall be liable to Buyer for any excess cost for such similar goods or services.
- g. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.



- h. The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law or in equity, or under this Contract.
- i. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" Article of this Contract.

#### **11. FORCE MAJEURE**

Neither Buyer nor Seller shall be liable for failure to perform under this Contract if such failure is due to events which are (i) beyond the reasonable control and without the fault or negligence of Buyer or Seller, or beyond the reasonable control and without the fault or negligence of Buyer's or Seller's subcontractor, as the case may be, and (ii) occur after the execution of this Contract and prevent its performance; provided such failure to perform shall only be excused for the duration of such intervening event and shall be subject to the Buyer's right to terminate this Contract for convenience. Examples of such force majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of governmental authority (including export restrictions). The party wishing to claim relief by reason of force majeure (including on behalf of its subcontractor) shall immediately notify the other party in writing.

#### **12. QUALITY CONTROL.**

- a. Seller shall have and maintain a quality control system acceptable to Buyer for the goods purchased under this Contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability.
- b. Seller shall promptly notify Buyer in writing in the event of discrepancies in Seller's processes, including any deviation from Seller's approved inspection/quality control system, or in the event noncompliant goods are discovered or suspected.
- c. Whenever Seller receives, either before or after shipment of goods under this Contract, notification that any goods, including any component, part, or material, is the subject of a Government-Industry Data Exchange Program ("GIDEP") alert, Seller shall promptly furnish such information to Buyer. If this Contract is over \$500,000, Seller shall participate in GIDEP under the latest revision of GIDEP Requirements Guide, NAVSEA S0300-BU-GYD-010.

#### **13. INSPECTION AND TESTING**

- a. At no additional cost to Buyer, Buyer and Buyer's customer shall have the right to inspect and test at reasonable times and places, including Seller's subcontractors' locations.
- b. Seller shall maintain an inspection system acceptable to Buyer for the goods purchased under this Contract.
- c. When inspection or testing is performed on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of such inspection and testing.

#### **14. ACCEPTANCE AND REJECTION**

- a. No notice of acceptance, payment, passage of title, prior test or inspection, failure or delay in performing any test or inspection, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.



- b. If Seller delivers nonconforming goods, Buyer may at its option and at Seller's expense: (i) require Seller to promptly correct or replace the goods; or (ii) return the goods for credit or refund. Return to Seller of nonconforming goods and redelivery to Buyer of corrected or replaced goods shall be at Seller's expense.
- c. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or correction and any corrective action taken.

## **15. WARRANTY**

- a. Seller warrants that:
  - i. Deliverables (including all goods, services, data and software) furnished under this Contract shall be free of defects and conform to all specifications and requirements of this Contract;
  - ii. Goods shall be of new manufacture and shall not contain used or reconditioned parts unless otherwise specified by Buyer;
  - iii. To the extent goods are not manufactured pursuant to Buyer-furnished detailed designs and specifications, goods shall be free from design and specification defects;
  - iv. Deliverables shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party;
  - v. Deliverables shall be free from liens or encumbrances;
  - vi. Deliverables shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; (d) permit unauthorized access to any software or hardware or (e) perform any other nonconforming or unauthorized process; and
- b. This warranty shall begin, with respect to each separate Deliverable, upon Buyer's acceptance of that Deliverable, and shall extend until the earlier of (i) one (1) year after the ultimate end customer accepts a product containing said Deliverable or (ii) two (2) years after Buyer's acceptance of said deliverable, or such other period tailored for this Contract as set forth in the purchase order. The warranty shall run to Buyer and its successors, assigns and customer. In the event of any defect or nonconformance, Buyer may, at its option and at Seller's expense, (i) require prompt correction or replacement, or reperformance in the case of services or (ii) return the Deliverables for credit or refund.
- c. Transportation costs for the return to Seller of defective or nonconforming Deliverables and redelivery to Buyer of corrected or replaced Deliverables shall be at Seller's expense.
- d. Deliverables corrected or replaced shall be warranted for the greater of (i) 180 days or (ii) the remaining duration of the original warranty.
- e. If Seller disputes the existence of a defect or nonconformity, Seller shall nevertheless promptly comply with Buyer's direction to (i) correct, replace or reperform or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If it is later determined that there was no defect or nonconformance, the Contract price shall be equitably adjusted.

## **16. COUNTERFEIT GOODS**

- a. Seller shall not furnish Counterfeit goods to Buyer, defined as goods or separately-identifiable items or components of goods that (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or



are not constructed in accordance with OEM design; (iv) have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, shall not be deemed Counterfeit. Counterfeit goods shall be deemed nonconforming to this Contract.

- b. Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit. Seller's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.
- c. If Seller becomes aware or suspects that it has furnished Counterfeit goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. For confirmed Counterfeit goods, GIDEP notification shall also be made no later than sixty (60) days after discovery. Seller shall be liable for all costs related to the replacement of Counterfeit goods, including the removal and replacement of Counterfeit components from higher level assemblies, and any testing or validation necessitated by the installation of authentic goods after Counterfeit goods have been replaced.
- d. Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

## **17. INVOICES AND PAYMENT**

Unless otherwise authorized by Buyer, Seller shall issue a separate original invoice for each delivery. Each invoice shall include Buyer's Contract number and line item number. Seller shall mail its invoice to the address specified on the purchase order or shall comply with other instructions if specified on the purchase order. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be in US dollars and shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly notify Buyer and repay any amounts paid in excess of amounts due.

## **18. FINANCIAL RECORDS AND AUDIT**

Seller shall retain all financial records and documents pertaining to the performance of this Contract for no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.



## **19. DEFECTIVE COST OR PRICING DATA**

- a. If this Contract is a subcontract under a U.S. Government contract to which the Truth in Negotiations Act applies, and if Seller, its subcontractor, or prospective subcontractor fails to submit accurate, complete and current cost or pricing data, and, as a result of that failure, Buyer incurs a price reduction from its customer, Buyer may recover from Seller an amount equal to the price reduction.
- b. If, as a result of Seller's or its subcontractor's foregoing conduct, Buyer must pay a penalty or interest, Buyer may recover from Seller the amount of that penalty and interest.

## **20. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS**

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and quality testing and procedures; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this Article that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall not include information that is, as evidenced by competent records provided by the receiving Party, lawfully in the public domain, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, or developed by the receiving Party independently without use of or reference to the disclosing Party's Proprietary Information and Materials.
- b. Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this Article or any prior agreement, Buyer shall have the right to use and reproduce Seller's Proprietary Information and Materials internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Contract, other contracts with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials shall apply to all materials derived by the receiving Party or others on its behalf from the disclosing Party's Proprietary Information and Materials. In addition to disclosures permitted hereunder, a receiving Party may disclose received Proprietary Information and Materials in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of any such disclosure requirement and to reasonably cooperate with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing its scope.





- c. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer's Authorized Representative. Seller shall not at any time (i) dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without the prior written authorization of Buyer's Authorized Representative or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without notifying Buyer in writing before any such planned making, using, or selling activity and executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer, unless Buyer's Authorized Representative has provided prior written authorization to Seller. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Article.
- d. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- e. The provisions of this Article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this Article shall survive the performance, completion, termination or cancellation of this Contract.
- f. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other U.S. Government agency FAR supplement clauses incorporated in this Contract ("Nonconforming Markings"). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

## **21. INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT**

- a. Seller shall indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards, liabilities, damages, penalties, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Deliverables by Buyer or its customers at any tier, including the end user. Buyer or its customer will duly notify Seller of any such claim, suit or action. Seller will, at its own expense, fully defend such claim, suit or action on behalf of the indemnitees. Buyer's rights under this Article apply to Elbit Systems of America, LLC (ESA), all its subsidiaries, and all officers, agents and employees of ESA or any ESA subsidiary.
- b. In the event an infringement or misappropriation claim as described in this Article, or if Seller reasonably believes that a claim is likely to be made, Seller, at its option and in lieu of indemnification, may (i) modify the applicable Deliverables so that they become non-infringing but still conform fully with all Contract requirements or (ii) obtain for Buyer, at Seller's sole expense, all rights needed by Buyer to fulfill Buyer's intended use, including all of Buyer's contractual obligations.



## **22. INTELLECTUAL PROPERTY**

Unless funded by the U.S. Government (in which case federal regulations apply), any invention or intellectual property first made, developed or conceived by Seller in the performance of this Contract, or which is derived from or based on the use of information supplied by Buyer, in whole or in part, alone or with others, shall be the sole property of Buyer. Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. Any original works of authorship created by Seller hereunder are considered “works made for hire” under U.S. Copyright Law (17 U.S.C. §101). This Contract operates as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

## **23. THIRD-PARTY SOFTWARE DISCLOSURE.**

- a. Third party software means any software used, embedded, delivered with, or otherwise provided with the Deliverables that is licensed, owned, or controlled by a party other than the Seller. Such third party software includes, without limitation, open source, freeware, shareware, commercial, or other proprietary software.
- b. The Seller shall identify in advance any third party software it intends to use, embed, deliver, or otherwise provide to the Buyer in connection with the Seller’s goods and make available to the Seller any license agreements pertaining to such third party software.

## **24. OPEN SOURCE SOFTWARE RESTRICTIONS AND WARRANTY**

- a. Seller warrants that it has accurately identified and described for all Open Source Code that is contained in, distributed with, or used in the development of the Seller’s Deliverables or from which any part of any Seller’s Deliverables are derived,
  - i. the applicable license terms for such Open Source Code, and
  - ii. Seller’s Deliverables to which such Open Source Code relates.
- b. Seller warrants that it will not use, embed, deliver, or otherwise provide to the Buyer, in whole or in part, any software that is subject to the provision of any open source or other type of license agreement or distribution model that:
  - i. requires the distribution or making available of the source code for any software,
  - ii. prohibits or limits the Seller or Buyer from charging a fee or receiving consideration in connection with sublicensing, incorporation or distribution of any Deliverable,
  - iii. prohibits the use of such software in connection with a defense article or project,
  - iv. grants any right to any person or otherwise allows any such person to decompile, disassemble or otherwise reverse-engineer any software or other intellectual property, or
  - v. requires the licensing of any intellectual property for the purpose of making derivative works.
- c. Seller further warrants that no software used, embedded, delivered, or otherwise provided to the Buyer is subject to such licenses, nor constitutes a derivative work of, or is dynamically linked with, or is otherwise designed to interact with any software subject to any of the licenses or restrictions identified in paragraph b of this Article.

## **25. ASSIGNMENT**



Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Contract without the prior written consent of Buyer's Authorized Representative. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under this Contract without Seller's prior written consent.

## **26. PUBLICITY AND CUSTOMER COMMUNICATION**

- a. Without Buyer's Authorized Representative's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or any other statement regarding this Contract or the Deliverables or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.
- b. Except as otherwise expressly provided in this Contract, Buyer shall be responsible for all coordination and communication with Buyer's customer regarding this Contract or the Deliverables or program to which it pertains. Seller shall have no communications regarding the foregoing with Buyer's customer without Buyer's Authorized Representative's advance written approval and coordination.

## **27. PROPERTY MANAGEMENT**

- a. Buyer's Property. Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer or the Government acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's Authorized Representative's prior written consent. Seller shall notify Buyer if Buyer's property is lost, damaged or destroyed. If directed by Buyer, upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest
- b. Government-Owned Property and Special Tooling. To the extent that Seller, including any subcontractor thereof, uses U.S. Government property or special tooling, either furnished to or acquired by Seller under this Contract, in the performance of this Contract, Seller shall manage such property in accordance with applicable federal regulations, including any clauses incorporated by reference into this Contract.

## **28. UTILIZATION OF SMALL BUSINESS CONCERNS**

If this Contract is a subcontract under a U.S. Government contract, Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned



small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Contract.

## 29. COMPLIANCE WITH LAWS, GRATUITIES AND SUBCONTRACTING

- a. Seller shall at all times during the performance of the subject Agreement be a registered member of the TRAC ([www.tracnumber.com](http://www.tracnumber.com)), and allow Buyer full access to Seller's TRAC profile.
- b. Seller and the goods shall comply with all applicable statutes and government rules, regulations and orders. Without acting as a limitation, Seller shall comply with (i) all applicable country laws relating to anti-corruption and anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention"); and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- c. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.
- d. Seller agrees that no subcontract placed under this Contract will provide for payment on a cost plus- a-percentage-of-cost basis.

## 30. CONFLICT MINERALS

Buyer's policy is to use "conflict-free" minerals in Buyer's products. As part of Buyer's conflict minerals compliance policy, Buyer requires that all of Buyer's current and potential suppliers of raw materials or products complete a Conflict Minerals Supplier Due Diligence Questionnaire. Buyer's Supplier Due Diligence Questionnaire, under the name of Buyer's parent, Elbit Systems of America, LLC, is administered by TRAC and is available at [www.TRAC.com](http://www.TRAC.com). Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under this Contract or otherwise, complete Buyer's Conflict Minerals Supplier Due Diligence Questionnaire. Seller shall provide any additional 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 Section 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 Section 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).

Noncompliance with any element of this section is a default for purposes of the Termination for Default article of this Contract.

## 31. SELLER'S FACILITY AND PLACE OF PERFORMANCE

Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the goods or moving tooling or other equipment utilized in the manufacture of the



goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's Authorized Representative's prior written approval.

### **32. ACCESS TO PLANTS AND PROPERTIES**

Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with: (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; and (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel. In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

### **33. IMPORT AND EXPORT TRADE CONTROL COMPLIANCE**

- a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in regulations issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").
- b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer, both within and outside the United States, to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- c. Upon Buyer's request, Seller shall provide Buyer with the export control classification of any Deliverable.
- d. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
- e. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
- f. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- g. Seller shall incorporate into any contracts with its sub-tier suppliers obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.



### **34. GOVERNING LAW**

This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State where Buyer is located as shown on the purchase order, without regard to that State's conflict of law rules, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR supplements and (ii) contract provisions that have been flowed down from a contract with the U.S. Government shall be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

### **35. DISPUTES**

- a. Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties shall be decided by a court of competent jurisdiction located in the State where Buyer is located, as shown on the purchase order. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
- b. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.
- c. If this Contract is a subcontract under a U.S. Government Contract, and if the Contracting Officer of the Government Contract by a final decision interprets any provision or requirement that applies to Buyer, and the same or substantially similar provision or requirement is contained in this Contract, such interpretation shall be binding between Buyer and Seller; provided that Buyer affords Seller the opportunity to appeal such decision, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller's appeal is made in Buyer's name, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term "appeal" shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.
- d. If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's customer.

### **36. NO WAIVER; RIGHTS AND REMEDIES**

- a. Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, such provisions, rights and remedies shall remain in full force and effect.



- b. Except as expressly and affirmatively disclaimed in writing in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Deliverables to Buyer.
- c. Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Seller from its obligations to perform all requirements of this Contract.
- d. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.

### **37. INSURANCE AND RULES**

- a. Seller shall maintain, and cause its subcontractors to maintain, the insurance coverages that the higher of those specified in the purchase order or any other attachment to this Contract or the following: Statutory Workers' Compensation coverage and Employers' Liability with a limit of \$500,000; Commercial General Liability (including bodily injury and property damage, products / completed operations coverage and contractual liability coverage) with a limit of \$1,000,000 per occurrence. When applicable to Seller's performance of the Contract, Seller shall also maintain, and cause its subcontractors to maintain, (i) Automobile Liability coverage with a limit of \$1,000,000 per accident; and (ii) Professional Liability covering the services provided by Seller. Upon Buyer's request, Seller shall (i) provide Buyer with certificates of insurance evidencing required insurance, (ii) arrange for a waiver of subrogation in favor of Buyer and (iii) in the case of the Commercial General Liability and Automobile Liability policies direct that Buyer be added as an additional insured.
- b. If work is to be performed on premises owned or controlled by Buyer, then Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Contract.

### **38. INDEMNIFICATION**

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its customer and their respective officers, directors, employees and agents from and against all claims, suits, liabilities and damages of any kind (including claims under Workers' Compensation or similar laws) and resulting costs and expenses (including attorney fees) which arise from personal injury or death, or property loss or damage, attributed to or caused by the Deliverables or any act or omission of Seller, its subcontractors, any third party under Seller's control, or their respective employees.

### **39. U.S. GOVERNMENT CLAUSES**

- a. If this Contract is a subcontract under a U.S. Government contract and the Deliverables have been represented by Seller to be a Commercial Item as defined by the Federal Acquisition Regulation ("FAR") 2.101, the clauses listed in "ESA-FFP-USG1" are incorporated herein and a part of this Contract.



- b. If this Contract is a subcontract under a U.S. Government contract and the Deliverables are not Commercial Items, the clauses listed in “ESA-FFP-USG2” are incorporated herein and a part of this Contract.

#### **40. CODE OF BUSINESS ETHICS AND CONDUCT**

Seller agrees that it shall comply with the Elbit Systems of America “Supplier Code of Business Ethics and Conduct”, which is incorporated by reference herein and is located at:

<http://www.elbitsystems-us.com/sites/default/files/ESASupplierCodeofBusinessEthicsandConduct.pdf>.

#### **41. ORDER OF PRECEDENCE**

All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

Document Title/Description:

- a. The purchase order document and any specific terms on that order.
- b. These General Provisions.
- c. Terms and conditions other than these General Provisions (including flow down clauses) incorporated by reference on the purchase order.
- d. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer’s specifications will prevail over any subsidiary documents referenced therein).
- e. Statements of work (the most recently agreed to and issued version of a statement of work shall control).
- f. All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this Contract.

#### **42. ENTIRE AGREEMENT**

This Contract contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Contract. Except as authorized herein (e.g., the Changes Clause), no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by authorized representatives of Buyer and Seller.