

TERMS AND CONDITIONS

1. CONTRACT FORMATION

If this order is an offer, Seller's acceptance of this order shall be on, and expressly limited to, the terms and conditions hereof. If this order is an acceptance of an offer, acceptance is expressly made conditional on Seller's assent to the terms and conditions of this order. This order applies to the goods, services or other deliverables (collectively, the **Items**) described herein. Shipment of any Items, or provision of any service contemplated herein, shall constitute acceptance or assent. Seller may not ship under reservation. None of Seller's terms and conditions of sale contained in any quotation, acknowledgment, invoice, acceptance of this order or any other document shall apply. These terms and conditions along with the related purchase order issued by Buyer constitute the entire agreement between parties with regard to the Items and will be collectively referred to herein as this **Contract**.

2. SCHEDULE

- a. Time is of the essence in this Contract. Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible. Unless Seller is excused from prompt performance as provided in the Delivery section of this Contract, the added premium transportation costs are to be borne by Seller.
- b. Seller shall not deliver Items prior to the scheduled delivery dates unless authorized by Buyer.
- c. Buyer may, at no additional cost, retain Items furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess.

3. PACKING AND SHIPPING

- a. Seller shall pack the Items to prevent damage, foreign object debris/damage (**FOD**), and deterioration. FOD creating packing materials such as vermiculite or packing peanuts are prohibited for shipment(s) against this Contract. Hose ends or exposed connectors on assemblies shall be capped. Parts shall be packaged in quantities specified in this Contract with identification to include Part Number, Manufacturer CAGE code, Manufacturer name, Manufacturer lot or batch or serial number(s) – i.e., if package requirement is 25 parts per pack, there shall be 25 parts in each package. Regardless of transportation mode, all Items shall be suitably packed and properly marked (including notice of hazardous substances) or otherwise prepared for shipment so as to secure the lowest transportation rates and to meet carrier's requirements (reference ATA-300). When shipping requires multiple containers, each container shall be marked externally with appropriate box number (for example, 1 of x, 2 of x, ... x of x) and required traceability documents shall be placed inside of box 1 on top of Items. No charge will be allowed for packing, crating or carriage unless stated in this Contract. Unless otherwise authorized by Buyer in writing (i) all surface shipments shall be declared at the lowest release valuation allowed by the carrier and (ii) domestic and international expedited air shipments shall be waived. If Buyer has agreed to pay for freight charges (e.g. Collect), the Seller shall ship by the carrier and service level designated by Buyer on this Contract. If not, Seller shall pay all costs of shipping.
- b. Items that contain Electrostatic Discharge Sensitive Devices must be handled, packaged, marked, and labeled in accordance with ANSI/ESD20.20 or MIL-STS-1686.
- c. HAZMAT Items must be packaged, marked and labeled in accordance with applicable federal and international regulations, e.g. 49 CFR, ICAO, and IMO. Seller is responsible for handling and disposal fees for HAZMAT Items received damaged resulting in the Item being scrapped by the Buyer.
- d. Risk of loss for the Items purchased hereunder shall be borne by Seller until the Items are delivered FCA (Incoterms® 2020) at the point specified in this Contract or, if no point is given, until delivery to Buyer, at Buyer's facility.
- e. Seller agrees to drop-ship Items to Buyer's customers at the request of Buyer. In such event, title to and risk of loss for the Items purchased hereunder shall be borne by Seller until the Items are delivered FCA (Incoterms® 2020) to Buyer's customer, at the Seller location. For drop-ship Items, the documentation specified in Section 9 of this Contract shall be delivered with the Items to the Buyer's customer.
- f. All Items, unless exempt from Section 304, Tariff Act of 1930 as amended (19 U.S.C. 1304), shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the Item (or container) will permit with the English name of the country of origin of the Item. Packages of Items shall be marked with the name of the country of origin. Some examples of marking the country of origin are: "Made in France", "Made in Germany" and "Made in Italy." Abbreviations or spelling variants may be used provided they unmistakably identify the country of origin to any person; however, the use of the full English name is recommended. The use of the two letter International Standards Organization (**ISO**) country abbreviation is not permitted.
- g. A copy of the shipping paperwork will be forwarded to Buyer's purchasing agent before shipment.

4. QUALITY CONTROL AND QUALITY MANAGEMENT SYSTEM REQUIREMENTS

- a. Quality Control/Quality Management System: Seller shall establish and maintain a quality system acceptable to Buyer for the Items purchased under this Contract. For Sellers of hardware Items that will become part of an aviation system, AS9100 or AS9120 is required. For maintenance, repair, and overhaul activity, certification by the cognizant Civil Aviation Authority (**CAA**) is required. AS9110 certification is not a substitution for local CAA approvals. Where personnel training certification/licensing is required for service contracts such as an A&P license or NDT certifications, certification documents shall be made available for review within 3 working days of Buyer's written request. When third party certification(s) are required, Seller shall notify Buyer within 5 working days of any changes to certification(s). Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability, if requested.
- b. Quality Surveys: The Seller shall respond to any quality surveys provided by Buyer at BDISQ@boeing.com within 30 days of request. Buyer will have the right to suspend invoice payments in the event of a failure to timely respond to such requests. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items delivered to Buyer during the period of any such violation or deviation.
- c. Record Retention: Seller is responsible for maintaining all records required to document Seller's manufacturer's certifications and configuration statuses including inspection data such as First Article Inspection reports. Records must be maintained for the length of time required by the relevant authority. If the relevant authority provides no time frame, the documents related to Items that will become part of an aircraft must be maintained for a minimum of 10 years after the contract completion and confirmation by the Buyer prior to destruction of any records related to this Contract. Record retention for Items that will not become part of an aircraft or for consumables is 7 years.
- d. FOD Program: Seller shall maintain a FOD prevention program compliant with AS9146™.
- e. Design & Development/Special Processes: Unless otherwise specifically stated in the related purchase order, Buyer seeks no involvement in product special requirements, critical items or key characteristics or involvement in Seller's design and development process. Unless otherwise specifically requested in the related purchase order, Buyer has no requirement for test specimens. When special processes are used by Seller, Seller shall maintain a system for validating processes performed internally or if external providers will be performing special processing, unless otherwise directed by Buyer, Seller shall use Boeing approved vendors listed at <http://active.boeing.com/doingbiz/d14426> or obtain written approval from Buyer to deviate from Boeing approved special processors.
- f. Seller shall ensure that the requirements of this Contract are met and will verify product and shipping documents against requirements of this Contract before shipment.

5. SELLER'S NOTICE OF DISCREPANCIES

Seller shall notify Buyer in writing to both the Purchasing Agent issuing the affected purchase order and BDINOE@boeing.com when discrepancies in Seller's process or Items are discovered or suspected regarding Items delivered or to be delivered under this Contract. Seller shall notify Buyer in writing within 1 business day of any violation of or suspected violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items delivered to Buyer during the period of any such violation or deviation or yet to be delivered. Notification shall include all known data (such as part number, purchase order number, dates of past shipments, and lot/batch) to assist Buyer identifying and segregating Items shipped by Seller. Seller must continue to provide updates on investigation until the issue is resolved and closed. Seller shall bear all costs associated with required recalls due to Seller nonconformance.

6. INSPECTION

- a. At no additional cost to Buyer, Items and all related records shall be subject to inspection, surveillance and test by Buyer, its customers and regulatory authorities at reasonable times and places, including Seller's subcontractors' locations. Any inspections, surveillance and tests performed by Buyer will be conducted in a manner designed to not to cause undue delay.
- b. Seller shall maintain an inspection system acceptable to Buyer for the Items purchased under this Contract.
- c. Unless otherwise specified elsewhere in the related purchase order, Seller shall maintain calibration system meeting the requirements of ISO 17025 for any Items purchased under this Contract requiring measurement.
- d. If Buyer performs an inspection or test 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 these duties.
- e. Seller shall obtain Buyer's approval for use of statistical techniques for item acceptance and provide any related instructions for acceptance by Buyer and advise of any other impact to Buyer's acceptance of items.

7. DELIVERY

Time is of the essence with this Contract. If any Items are not delivered within the time specified in this Contract, Buyer, in addition to other remedies provided by law, may refuse to accept such Items and cancel this Contract without penalty or cost. However, Seller shall not be liable for delays in delivery or failure to manufacture or deliver due to acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, floods, epidemics, war or riot, provided that the cause for such delay is reported in writing to Buyer within 7 days from the time commencement of such delay.

8. ITEM ACCEPTANCE AND REJECTION

- a. Buyer shall accept the Items or give Seller notice of rejection or revocation of acceptance notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test 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. Buyer reserves the right of final approval of Items or services including related procedures, processes, and equipment.

- b. Seller shall not deliver substitute, superseded or alternate Items without the prior written approval of Buyer.
- c. If Seller delivers non-conforming Items, Buyer may at its option and at Seller's expense (i) return the Items for credit or refund; (ii) require Seller to promptly correct or replace the Items; (iii) correct the Items; or (iv) obtain replacement Items from another source. Seller shall respond within 1 business day to Buyer's notification of receiving non-conformance. When non-conformance is discovered by Buyer's customer/end user, Seller shall provide an authorization to return the material within 3 business days of Buyer's notification.
- d. Seller shall not redeliver corrected or rejected Items without disclosing the former rejection or requirement for correction. Seller will disclose any corrective action taken. Repair, replacement and other correction and redelivery must be completed within the original delivery schedule or such later time as Buyer may reasonably direct.
- e. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Contract or otherwise.

9. **CERTIFICATION; TRACEABILITY AND PART BUILD DATA**

All traceability documentation and certifications shall be legible, in English, and reproducible through 2 additional reproductions. All handwritten data, including corrections, must be dated and initialed by an authorized person. A certificate of conformity is not interchangeable with an Authorized Release Certificate. The Items furnished under this Contract are intended for export as defined in paragraph 1.6(o) of the Technical Implementation Procedures (TIP) for Airworthiness and Environmental Certification between the Federal Aviation Administration (FAA) and the cognizant CAA (examples of CAA include European Aviation Safety Agency (EASA), Civil Aviation Authority of United Kingdom, Transport Canada, Civil Aviation Authority of China). As such the Items covered by this Contract must be accompanied by FAA Form 8130-3 as required by paragraph 5.0.1 of the TIP and section B., appendix 1, paragraph 10(k)(1)(i), (ii) and (vi) of the Maintenance Annex Guidance between the FAA and EASA. Specifically, (a) if the Item is FAA approved, the certificate must state that the Item was manufactured in accordance with applicable FARs (14 CFR §21, Subparts G, K, O, or N), PMA, TSO Items and critical components must be marked and labeled in accordance with 14 CFR § 45.15; (b) if the Item is EASA approved, the certificate must state that the Item was manufactured in accordance with EASA 21, Subpart G. For new engines, propellers, appliances and parts; an EASA Form 1 must be issued, for EASA Standard Parts a manufacturer's certificate of conformance may be issued (FAA/EASA TIP for Airworthiness and Environmental Certification); (c) for aerospace standard hardware Items, Seller must furnish a written certificate that such items conform to then applicable established U.S. Government or industry-accepted specifications for the items established by the manufacturer(s) thereof. In addition, each such Item must be manufactured in the United States unless specifically exempted in advance by the Buyer, and packed in a sealed container on which is plainly marked with Buyer's purchase order number, the manufacturer, the manufacturer's lot number, the quantity and cure date (if applicable); (d) for commercial type Item, the certification will state that the Item is supplied in accordance with the manufacturer's procedures as detailed below under (e) if the Item is hazardous, as defined by applicable regulation or triggers other hazardous communication requirements as specified by regulation; e.g. substance(s) with occupational exposure limits/workplace exposure limits; or industry best practice, Seller must provide a Safety Data Sheet (SDS) that is compliant to the federal standards of the Buyer's ship-to location, along with the United Nations Hazardous Material Code (see 49 CFR 100 et., seq.) before or with the shipment as detailed in subsection c. below. SDS documentation available on the manufacturer's website is acceptable to fulfill this requirement.

- a. Packing List: Packing lists, when delivered with Items, shall include: Packing list number, Seller's name and address, Buyer's ship to address, Buyer purchase order number and purchase order line number, Part Number for all Items, country of origin for all Items, no pricing or cost information, item description(s), quantity shipped for each item, serial number if applicable, manufacturer's CAGE code if applicable, manufacturer's batch or lot number. If Items are shelf life controlled, packing list shall also include date of manufacture and expiration date.
- b. Certificate of Conformity: All manufacturer's certification(s) must be provided to evidence that each Item is new and unused and was manufactured in accordance with the drawings and specifications approved by the manufacturer and relevant authority. Certification shall include page (of pages), certificate number (if separate from packing list), packing list number (if separate document), date, seller's name and address, Customer name and address, Customer Purchase Order number and line item for each part number, Country of Origin for each item, Quantity of each part number, Material description/nomenclature for each part number, revision of each part number, traceability such as lot(s), batch(es) or serial number(s) for each part number, Remarks, Conformity Details (such as specs to which material is certified) for each part number, and Statement of Conformity for the shipment. Certification may be combined with packing list as long as all requirements for both are present. The certification statement when produced manually shall be legibly signed or stamped by an authorized person and may be at the bottom of the packing list or on a separate page referring to the packing list. Signature may be electronic. Signature may be omitted when a signed letter from Manufacturer has been submitted to BDISQ@boeing.com stating certification is ERP/MRP generated with traceability to an agent with authority to release material as part of an accredited QMS.
- c. Hazardous Items: Hazardous Items must be properly labeled per federal standards of the Buyer ship-to location (e.g. OSHA, CLP, WHMIS, or WHS) and align with the Section 1 and 2, respectively, of the SDS. Seller agrees to provide a SDS compliant to initial purchase location prior to initial purchase. Seller agrees to provide a SDS compliant to each region and language where the material will be sold or used, at any time after purchase. If Seller does not maintain a SDS in each required region and language format, Seller agrees to either create the required documents or assist Buyer in their creation by providing necessary information. Dangerous Goods will be identified prior to purchase and shipped to Buyer in full compliance with regulations. If the material is or includes lithium batteries, a Test Summary Report will be included prior to purchase. If the Items include explosives, as defined by the Bureau of Alcohol Tobacco and Firearms (ATF), U.S. Department of Treasury (see 27 §CFR et. seq.), Seller must provide Buyer with an ATF Exemption Letter prior to shipment; (f) If Items contain substance of very high concern (SVHC), as defined by EU Directive EC No. 1907/2006, Registration, Evaluation and Authorization of Chemicals, identification must be included by Seller at time of purchase and include the SVHC chemical name, chemical weight, part weight and any applicable safe use or handling information. Seller acknowledges and agrees that Buyer is authorized to disclose such information to customers and any applicable regulatory agencies. Buyer reserves the right to request validation of SVHC information at any point after. Seller agrees to provide true, correct, and complete information with respect to the Items within 30 days of request by Buyer, or such other time period as is agreed to by Buyer, so as to enable Buyer to set up a parts record file in Seller's electronic systems including but not limited to environmental, health, safety, dangerous good, trade data and other additional information as Buyer reasonably requires for compliance and sales purposes.

10. **WARRANTIES**

Seller warrants that:

- a. Materials: Items furnished under this Contract shall be manufactured from NEW and UNUSED materials to the latest released/approved configuration and manufactured by the design authority or an approved licensee of the design authority, unless otherwise stated in the related purchase order, conforming to all specifications and requirements of this Contract and shall be free from defects in materials and workmanship;
- b. Minimum Shelf Life: For Items that have a shelf life, such Items shall have the greater of (i) 90% of manufacturer recommended shelf life or (ii) two (2) years of shelf life remaining at the time of shipment from Seller or includes a statement on the shipping documents stating that shelf life begins when Buyer delivers the Item to a customer as an authorized distributor of the Item;
- c. Services: For purchases of services, Seller warrants such activity is performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards;
- d. Intellectual Property: The Items shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party;
- e. The Items are free from liens or encumbrances;
- f. Conflict Minerals: If Items contain Conflict Minerals, as defined by Section 1502 of the USA Dodd Frank Wall Street Reform and Consumer Protection Act, Seller will notify Buyer, using the Conflict Minerals Reporting Template, found at <http://www.boeing.com>, via email at PRC@boeing.com upon receipt of the related purchase order before shipment. Contact BoeingCMR@boeing.com for any questions about this requirement. Seller acknowledges and agrees that Buyer is authorized to disclose such information to customers and any applicable regulatory agencies;
- g. Asbestos: Items procured under this Contract do not contain any form of asbestos;
- h. Mercury: If Items contain mercury or mercury compounds, Seller will notify Buyer of mercury compound name, CAS number, total part weight, and concentration of mercury compound, via email at PRC@boeing.com upon receipt of the related purchase order before shipment. Seller acknowledges and agrees that Buyer is authorized to disclose such information to customers and any applicable regulatory agencies;
- i. Cybersecurity: The Items 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; or (d) permit unauthorized access to any software or hardware; and the Items shall not contain any third-party software (including software that may be considered free software or open source software) that: (i) may require any software to be published, accessed or otherwise made available without the consent of Buyer; or (ii) may require distribution, copying or modification of any software free of charge; and
- j. Personnel: Persons performing work which affects this Contract are aware of their contribution to Items or service conformity, their contribution to product safety and the importance of ethical behavior. Seller further warrants all work required by this Contract has been performed by qualified persons or was supervised and certified as conforming by qualified personnel.

The warranties set forth herein are in addition to and not in limitation of all expressed or implied warranties of Seller and all warranties provided by law.

11. **INDEMNITY**

Seller shall indemnify Buyer, its affiliates including its parent and all subsidiaries, and their directors, officers, employees and agents, and anyone buying or using any of the Items or any party to which Buyer provides services and shall defend and hold each of them harmless against all losses, liabilities, damages, costs, and expenses arising from (a) infringement or alleged infringement of any United States or foreign patent, copyright or other intellectual property right with respect to any of the Items delivered hereunder or their use, (b) claims made by reason of injury or death to person or damage to property suffered or claimed to have been suffered by any entity or person caused by or alleged to have been caused by defective Items furnished hereunder or by any act or omission, negligent or otherwise, of Seller or any subcontractor of Seller or any of their employees, workmen, servants, or agents, any customer of Buyer or any other third party, (c) labor or material liens arising out of or on account of the Items or their use or of any work performed by Seller or any subcontractor of Seller, (d) claims by any third party for any fee, commission or other compensation for services performed or allegedly performed on behalf of Seller in connection with this Contract, and (e) fines and civil or criminal penalties arising out of the manufacture or delivery or performance by Seller or Item hereunder. The negligence of Buyer, its customers or third parties shall not mitigate or otherwise invalidate Seller's liability under this paragraph. Promptly on Buyer's request, Seller shall pay all such losses, liabilities, damages, costs and expenses and all costs and expenses including without limitation reasonable attorney's fees for any claim, demand, suit, action, proceeding, litigation, or settlement relating thereto.

12. **TAXES**
The price of the Items includes, and Seller is liable for and will pay, all taxes, impositions, charges and exactions imposed on or measured by the Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices will not include any taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
13. **INVOICES AND PAYMENT**
SELLER MUST PROVIDE TO BUYER A COMMERCIAL INVOICE PRIOR TO OR IN CONJUNCTION WITH SHIPMENT OF THE ITEMS PURCHASED HEREUNDER, WHICH CONTAINS SUCH INFORMATION AS IS REQUIRED BY BUYER INCLUDING (A) NAME AND ADDRESS OF SELLER AND BUYER, (B) BUYER'S PURCHASE ORDER NUMBER, (C) DATE OF INVOICE, (D) ITEM NUMBERS, (E) COMPLETE AND CLEAR DESCRIPTION OF ITEMS, (F) SIZES, (G) QUANTITIES, (H) UNIT PRICES AND FINAL PRICE, (I) CURRENCY, (J) SHIPPING DATES, (K) INCOTERM, (L) COUNTRY OF ORIGIN, AND (M) IF APPLICABLE, TIME AND MATERIAL CHARGES AND SUBCONTRACT CHARGES. 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 for the Items, the actual delivery date of the Items, or the date of receipt by Buyer of a corrected invoice. Payment will be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Buyer will make payment for the Items in accordance with the payment terms established by Buyer in Buyer's system.
14. **PRICE OFFSET**
Any price decrease announced by Seller for the same or similar Items shall automatically reduce the price of the Items purchased under this Contract by a comparable amount or percentage. Buyer shall have the right (but no duty) to withhold monies payable by it hereunder and apply them to the payment of any obligation of Seller to Buyer or any other part arising in any manner out of this Contract.
15. **TERMINATION AT BUYER'S OPTION; SUSPENSION OF WORK**
a. Should Buyer's need for the Items be reduced or eliminated, Buyer may terminate this Contract in whole or in part. If Seller is unable to make other disposition of the Items, Buyer shall pay Seller the reasonable value of the work performed by Seller in respect of such Items up to the time of written notification of termination by Buyer, Buyer's liability under this paragraph shall never exceed the aggregate price specified in this Contract.
b. Buyer may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed 100 days. Within such period, Buyer will (i) cancel the suspension of work order; (ii) terminate this Contract pursuant to the provisions of this Contract; or (iii) extend the stop work period upon mutual agreement of the parties. Seller shall resume work whenever a suspension is cancelled or expires. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) this Contract is not canceled or 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 20 days after the suspension is cancelled or expires.
16. **DEFAULT AND REMEDIES**
The occurrence of any one or more of the following events shall constitute an **Event of Default**: (i) any failure by Seller to deliver Items on time that conform to the specifications in this Contract; (ii) Seller knowingly, willfully, or with gross negligence has participated in the sale, purchase or manufacture of airplane parts without the required approval of the FAA or appropriate non-U.S. equivalent regulatory agency; (iii) Buyer reasonably revokes and has not reinstated its determination that Seller is in compliance to Buyer's quality requirements; (iv) any failure by Seller to perform or comply with any obligation set forth in this Contract that is not specified in another subsection and that continues un-remedied for a period of 30 days or more following receipt by Seller of written notice from Buyer specifying such failure; or (v) the suspension, dissolution or winding-up of Buyer's or Seller's business; (vi) Buyer's or Seller's inability to pay debts, or its nonpayment of debts, generally as they become due; (vii) the institution of reorganization, liquidation or other such proceedings by or against Buyer or Seller or the appointment of a custodian, trustee, receiver or similar Person for any such company's properties or business; (viii) an assignment by Buyer or Seller for the benefit of its creditors; or (ix) any action of Buyer or Seller for the purpose of effecting or facilitating any of the foregoing; (x) any material failure by Seller to comply with Section 20 "Business Conduct" and Section 22 "Trade Control Compliance"; (xi) any failure by Seller to comply with Section 26 "Assignment and Subcontracting".
If any Event of Default by Seller shall occur:
a. Buyer may engage any other entity to manufacture, rework, repair, produce or provide, any Items in substitution for the Items to be delivered or provided by Seller which Buyer reasonably believes will be affected by the Event of Default. Buyer may recover from Seller the difference between the price for each such Item and the reasonable aggregate additional expense paid or incurred by Buyer to manufacture, produce or provide, or engage other persons to manufacture, produce or provide, each such Item.
b. Buyer may, by written notice to Seller, cancel all or part of this Contract upon the occurrence of an Event of Default: if, within 10 days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such 10 days and such plan is acceptable to Buyer.
c. Seller shall continue all work not cancelled.
d. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Items. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest.
e. Buyer shall pay the Contract price for completed Items accepted. 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.
f. The non-defaulting party shall, at its option, have the right to set off against and apply to the payment of any obligation, sum or amount owing at any time to the other party (pursuant to this Contract or any other that exists between the parties) all deposits, amounts or balances held by the non-defaulting party for the account of the other party and any amounts owed by the non-defaulting party to the other party, regardless of whether any such deposit, amount, balance or other amount is then due and owing.
17. **RESPONSIBILITY FOR PROPERTY**
Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's and customer's supplied property and all property to which Buyer has acquired an interest. Seller assumes all risk of loss, deterioration, destruction or damage of such property and lost paperwork while in Seller's or its subcontractors' or suppliers' possession, custody or control. Deterioration does not include Items deteriorated due to the lapse of shelf-life or other inherent deterioration. 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 prior written consent from Buyer. Seller shall promptly notify Buyer if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of all or a portion of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this clause limits Seller's use, in its direct contracts with the government, of property in which the government has an interest.
18. **COUNTERFEIT OR SUSPECT UNAPPROVED PARTS**
a. Seller agrees that it shall not furnish Counterfeit Goods or Suspect Unapproved Parts 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 (**OEM**) or original component manufacturer (**OCM**) item; (ii) are not traceable to an OCM/OEM sufficient to ensure authenticity in OCM/OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OCM/OEM or are not constructed in accordance with OCM/OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OCM/OEM design but not disclosed as such or are represented as OCM/OEM authentic or new; or (v) have not passed successfully all OCM/OEM required testing, verification, screening, and quality control processes. Counterfeit Goods shall be deemed nonconforming to this Contract.
b. Seller shall implement or maintain an appropriate strategy using SAE AS5553 and AS6174 as guidelines including flow-down of this requirement to Seller's sub-tier suppliers to ensure that Items furnished to Buyer hereunder are not Counterfeit Goods. Seller's strategy shall include, but is not limited to, the direct procurement of items from only OCM/OEMs or authorized distributors (ADs) conducting approved testing or inspection to ensure the authenticity of Items as necessary.
c. If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer, Seller will promptly, but in no case later than 15 days from discovery, notify Buyer and replace, at Seller's expense, such Counterfeit Goods with OCM/OEM or Buyer-approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs incurred by Buyer related to Counterfeit Goods provided by Seller.
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 provision. Where Services such as maintenance, repair or overhaul activities require replacement of Items, such replacement Items shall comply with all requirements in this section.
e. The Counterfeit Electronic Parts Avoidance procedure applies to all electrical, electronic or electromechanical parts. The requirements of the following purchase notes also apply to this Contract when the order is for electrical, electronic or electromechanical parts. Please refer to the websites following for the complete verbiage. M432 (OCM/AD), Q024 (OCM/AD), Q004 (OEM), M436 (OEM), Q132, Q831, Q927, Q011S, Q186, Q224S, Q300, Q320, and Q836S.
Follow Q004 and M436 (and other noted requirements) if you are the OEM.
Follow Q024 and M432 (and other noted requirements) if you are the OCM/AD.
<http://www.boeingsuppliers.com/clauses/clauses.html>
http://www.boeingsuppliers.com/idscommon/clauses/clause_m.htm
19. **SELLER FINANCIAL REVIEW**
If the Contract exceeds \$250,000 and extends for more than one year, and if requested, Seller shall provide financial data as specified below, on a quarterly basis, or as requested, to Buyer for credit and financial condition reviews. Such data shall include but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by Buyer. All such information shall be treated as confidential.
20. **BUSINESS CONDUCT**
a. Compliance with Laws. Seller and the Items 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 or 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**) or other anti-corruption/anti-bribery 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.

- b. Gratuities. 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.
- c. Code of Basic Working Conditions and Human Rights. Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights (the **Code**) setting out in detail the measures it takes to ensure this commitment is fulfilled. The Code may be downloaded at <http://www.boeing.com/aboutus/culture/code.html>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Further, any material violation of law by Seller relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, of the country or countries in which Seller is performing work under this Contract may be considered a material breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and the Seller for cause in accordance with the "Default and Remedies" Section. Seller shall include the substance of this clause, including this flow-down requirement, in all subcontracts awarded by Seller for work under this Contract.
- d. Environmental Health and Safety Performance. Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system (**EMS**) appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver Items that contain any asbestos mineral fibers.
- e. Seller Facility Changes. Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the Items or moving tooling or other equipment utilized in the manufacture of the Items to another facility.
- f. Buyer Policies. Seller agrees that Buyer's internal policies, procedures and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.
- g. Radio Frequency. Where applicable, any radio frequency equipment provided under this Contract shall comply with applicable laws pertaining to the radio frequency certification and/or verification of regulatory conformance, and upon request Seller shall provide to the Buyer proof of such certification or the regulatory conformance test report. For the purposes of this Contract radio frequency equipment is defined as any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means, including but not limited to transmitters, receivers, or other intentional, unintentional or incidental emitters of radio frequency signals, excluding the use of commercial cellular telephones.
- h. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment is incorporated herein by reference. Except as may be otherwise stated, "Contractor," "Offeror" or any equivalent terms means Seller, "Government," "Contracting Officer" or any equivalent terms means Buyer, and all references to a "Disputes" clause shall mean the "Disputes" article of this Contract. Paragraph (b) is deleted and replaced with the following: "Seller is prohibited from providing Buyer with covered telecommunications equipment or services, or with any equipment, systems, or services that use covered equipment or services regardless of whether that use is in performance of work under a U.S. Government contract." Paragraph (c) is deleted in its entirety. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services provided to Buyer during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email." The effective version of this clause shall be the latest version published on the date this order is issued. The full text of this clause may be accessed electronically at <https://www.acquisition.gov/content/regulations>.

21. INSURANCE AND PROTECTION OF PROPERTY

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 flow-down requirement, in all subcontracts awarded by Seller where subcontractors will be performing work at Buyer premises.

The following provisions shall only apply if and to the extent Seller's personnel enter or perform work at premises owned or controlled by Buyer or Buyer's customer:

- a. Commercial General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, Commercial General Liability insurance with available limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph a herein) and goods and completed-operations insurance with limits of not less than \$1,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.
- b. Automobile Liability. If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- c. Workers' Compensation and Employers' Liability. Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than \$1,000,000 per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.
- d. Certificates of Insurance. Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs b, c and d. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer, and shall provide for 30 days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractor's obligations hereunder.
- e. Self-Assumption. Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Section shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor which provides the insurance and, to the extent applicable, shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.
- f. Protection of Property. Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties, whether owned, hired, rented, borrowed or otherwise, brought to a facility owned or controlled by Buyer or Buyer's customer. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times, Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

22. TRADE CONTROL COMPLIANCE

- a. The Parties shall comply with all export, import and sanction laws, regulations, decrees, orders, and policies (as amended) of the United States Government, the government of any country in which the Parties conduct business pursuant to this Contract and the government of any country which may exercise lawful jurisdiction over the controlled items, 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 anti-boycott and embargo regulations and guidelines as set forth in the EAR and in 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 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. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the trade data of any commodity or technology, including software. The Party providing Items under this Contract shall notify the other Party of the Item's trade data (e.g., the full Export Control Classification Numbers or United States Munitions List category and subcategory, country of origin, Harmonized Tariff Schedule, and Schedule B) as well as the trade data of any components or parts thereof if the same are different from the trade data of the item at issue. The Parties further agree that these trade data determinations shall be made by a qualified person (employee, consultant, advisor) empowered to act on behalf of the Party making the trade data and supported by bona fide evidence. Each Party agrees to reasonably cooperate with the other in providing, upon request documented evidence, proof or other supporting information that validates the trade data determination.
- d. 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.
- e. 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 any Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- f. Seller shall incorporate into any contracts with its sub-tier suppliers' obligations no less restrictive than those set forth herein requiring compliance with all applicable Trade Control Laws.

- g. If a Party engages in the export or import of a controlled item in support of its duties and obligations imposed under this Contract, then such Party conducting the export or import shall obtain all authorizations that are required under the applicable Trade Control Laws. Each Party shall cooperate and exercise reasonable efforts at its own expense to support the other Party in obtaining any necessary export and import authorizations required to perform its obligations under this Contract. Reasonable cooperation shall include providing necessary documentation, (e.g. import certificates, end-user and retransfer certificates).
- h. For country of origin and preference processing purposes, Seller shall promptly complete and return any questionnaires, forms, or inquiries associated with country of origin, preference criterion, or any data associated with free trade within 30 days. Buyer may make requests for certification of country of origin electronically through email or by portal access. Data provided to Buyer will be used to produce free trade documentation, including but not limited to the United States-Mexico-Canada Agreement Certification. If Seller elects to provide hard-copy certificates to Buyer, Seller acknowledges and agrees that such certificates will be valid for an entire calendar year. Should the country of origin or trade data provided to Buyer change within the validity date range of the certification, Seller must notify Buyer of such changes either by sending a notice to freetrade@shop.boeing.com or by portal access.
- i. All international and US domestic shipments must be accompanied by the required shipping documentation that Seller will provide to Buyer. For US domestic shipments, packing list must include the country of origin of each part supported on the shipment, and for international shipments, the commercial invoice and the packing list must include the country of origin.
- j. As this order is intended for export, Seller shall comply with the International Standards for Phytosanitary Measures ISPM15, regulating Wood Packaging Material in International Trade, as though the ship to address is international.
23. **INDEPENDENT CONTRACTOR**
Nothing in this Contract or any acceptance hereof shall constitute Seller or any of its officers, directors, or employee's as Buyer's agent, legal representative or employee. Seller is an independent contractor for all purposes.
24. **NOTICE TO BUYER OF LABOR DISPUTES**
Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice thereof, including all relevant information, to Buyer.
25. **UTILIZATION OF SMALL BUSINESS CONCERNS**
For work subcontracted in the US, 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.
26. **ASSIGNMENT AND SUBCONTRACTING**
Seller shall not delegate any duty or assign this Contract in whole or in part or subcontract its performance of this Contract without Buyer's prior written consent after advance written notice by Seller. Any attempted delegation, subcontract or assignment shall be void.
27. **CONTRACT MODIFICATION**
No modification of this Contract shall be binding on Buyer unless in writing and signed by Buyer or its agent. Usage of trade, course of performance, and course of dealing cannot supplement or modify the written terms of this Contract. Buyer reserves the right and Seller agrees to accept reasonable changes to this Contract, including changes as to packing, testing destinations, specifications, designs, and delivery schedules, but changes shall be authorized only by Buyer's written release order. Buyer's (a) failure to insist on strict performance of any term or condition hereof or (b) failure or delay to exercise any right or remedy provided herein or by law or properly to notify Seller in the event of breach or (c) acceptance of or payment for Items hereunder or (d) approval of any design shall not release Seller from any of the warranties or obligations of this Contract and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof or of any of its rights or remedies as to any prior or subsequent default hereunder nor shall any purported oral modification or rescission of this Contract by Buyer operate as a waiver of any term or condition hereof.
28. **PARTIAL INVALIDITY; RIGHTS AND REMEDIES**
The rights and remedies set forth in this Contract 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 of the Contract shall be valid and enforceable. Seller acknowledges and agrees that monetary 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 Items to Buyer. Buyer may at any time deduct or set-off money owed, due or to be actual, due to Seller from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.
29. **CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS**
Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this Section and obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract (collectively referred to as **Proprietary Information and Materials**). 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 and any other agreement referencing this Contract. However, despite any other obligations or restrictions imposed by this Section, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Items delivered under this Contract or any other agreement referencing this Contract. 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 by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. 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. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Section. 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 the same obligations imposed upon Seller under this Section relating to Proprietary Information and Material. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this Section are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this Section shall survive the performance, completion, termination or cancellation of this Contract.
30. **DISPUTES**
Buyer and Seller shall use their best reasonable efforts to resolve any and all disputes, controversies, claims or differences between Buyer and Seller, arising out of or relating in any way to the Contract or a Party's performance thereunder, including, but not limited to, any questions regarding the existence, validity or termination hereof, through negotiation. 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.
31. **APPLICABLE LAW**
The definitions of terms used, interpretation of this Contract, and rights of parties hereto shall be construed under and governed by the laws of the State of Delaware without regard to the conflict of law rules thereof. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Items.
32. **ORDER OF PRECEDENCE**
All documents and provision 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 terms of this Contract will prevail over all other attachments, exhibits, appendices, documents or other terms incorporated by reference in or attached to this Contract.
33. **CONDITIONS APPLICABLE ONLY IF THIS CONTRACT IS PLACED UNDER GOVERNMENT CONTRACT OR SUBCONTRACT**
If this Contract is placed pursuant to a Government prime contract or subcontract referenced by a number or otherwise in this Contract, Seller must comply with all FAR or DFAR flow down clauses deemed necessary or advisable by Buyer including, but not limited to, the following mandatory flow down clauses for commercial items set forth in FAR 52.212-5(e)(1) and DFARS 252.244-7000 are effective as applicable to this Contract:
- FAR 52.203- 6, Restrictions on Subcontractor Sales to the Government** (9/28/2006) Alt 1 (Oct 1995)
 - FAR 52.203-7, Anti-Kickback Procedures** (Excepting paragraph (c)(1))(Applicable to Purchase Orders that exceed \$150,000 or the dollar threshold in effect as of the date of the prime contract other than those for commercial items) (Oct 1988)
 - FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions** (Applicable to Purchase Orders exceeding \$150,000) (Oct 2010)
 - FAR 52.203-13, Contractor Code of Business Ethics and Conduct** (Oct 2015)
 - FAR 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009** (Jun 2010) (Applicable to contracts funded by the American Recovery and Reinvestment Act of 2009)
 - FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights** (Applicable to Purchase Orders over the simplified acquisition threshold under prime contracts awarded by civilian agencies other than NASA and the Coast Guard) (Apr 2014)
 - FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements** (Jan 2017)
 - FAR 52.204-7, System for Award Management** as applicable (Oct 2016)

FAR 52.204-8(d), Annual Representations and Certifications as applicable (Jan 2017)

FAR 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)

FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016)

FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Applicable to Purchase Orders of \$35,000 or more) (Oct 2015)

FAR 52.211-15, Defense Priority and Allocation Requirements (Apr 2008) (Required in all rated contracts)

FAR 52.212-3, Offer Representations and Certifications-Commercial Items (Provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete) (Jan 2017)

FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial – Items (Provides by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items) (Jan 2017)

FAR 52.219-8, Utilization of Small Business Concerns (Nov 2016) (Applicable to all Subcontracts that offer further subcontracting opportunities)

FAR 52.222-17, Nondisplacement of Qualified Workers (May 2014)

FAR 52.222-21, Prohibition of Segregated Facilities (Apr 2015)

FAR 52.222-26, Equal Opportunity (Sept 2016)

FAR 52.222-35, Equal Opportunity for Workers with Disabilities (Oct 2015)

FAR 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014)

FAR 52.222-37, Reports on Veterans (Feb 2016) (Insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor)

FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

FAR 52.222-41, Service Contract Labor Standards (May 2014)

FAR 52.222-50, Combating Trafficking in Persons (Mar 2015)

FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration or Repair of Certain Equipment – Requirements (May 2014)

FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements (May 2014)

FAR 52.222-54, Employment Eligibility Verification (Oct 2015)

FAR 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015)

FASR 52.222-59, Compliance with Labor Laws (Oct 2016)

FAR 52.222-60, Paycheck Transparency (Oct 2016)

FAR 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017)

FAR 52.224-3, Privacy Training (Jan 2017)

FAR 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving. (Aug 2011) (In all subcontracts that exceed the micro-purchase threshold)

FAR 52.225-13, Restrictions on Certain Foreign Purchases (June 2008)

FAR 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016)

FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014)

FAR 52.232-39, Unenforceability of Unauthorized Obligations. (Applicable to all Purchase Orders when any supply or service acquired that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation) (Jun 2013)

FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)

FAR 52.244-6, Subcontracts for Commercial Items. (Applicable to all Purchase Orders other than those for commercial items invoking the requirements of 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009, 52.219-8, Utilization of Small Business Concerns. 52.222-26, Equal Opportunity; 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans; 52.222-36, Affirmative Action for Workers with Disabilities; 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40; 52.222-50, Combating Trafficking in Persons (Feb 2009); 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246) and, 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels). (Dec 2010)

FAR 52.247-64, Preference for Privately Owned US Flag Commercial Vessels (Feb 2006)

DFAR 252.204-7000 Disclosure of Information (Oct 2016)

DFAR 252.203-7002, Requirement to Inform Employees of Whistleblower Rights (Applicable to Subcontractors at all tiers to inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 USC 4712) (Sep 2013)

DFAR 232.203-7003 Agency Office of the Inspector General (Dec 2012)

DFAR 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls (Applicable in all Purchase Orders using FAR part 12 procedures for the acquisition of commercial items) (Oct 2016)

DFAR 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Applicable to Purchase Orders in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties) (Oct 2016)

DFAR 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)

DFAR 252.204-7015, Disclosure of Information to Litigation Support Contractors (Applicable to those subcontractors that wish to have further protection of proprietary information) (May 2016)

DFAR 252.223-7008, Prohibition of Hexavalent Chromium (Applicable to all Purchase Orders for supplies, maintenance and repair services, or construction materials) (Jun 2013)

DFAR 252.225-7009, **Restriction on Acquisition of Certain Articles Containing Specialty Metals** (Oct 2014)

DFAR 252.225-7012, **Preference for Certain Domestic Commodities** (Dec 2016)

DFAR 252.225-7047 **Export by Approved Community Members in Performance of the Contract** (Jun 2013)

DFAR 252.225-7048, **Export-Controlled Items** (Applicable to Purchase Orders Requires subcontractors at all tiers to comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to the requirement for contractors to register with the Department of State in accordance with the ITAR. "Export-controlled items" as used in this clause means items subject to the Export Administration Regulations (EAR) or to the International Traffic in Arms Regulations (ITAR)) (Jun 2013)

DFAR 252.226-7001, **Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns** (Sep 2004)

DFAR 252.239-7010, **Cloud Computing Services** (Applicable ONLY in subcontracts that involve or may involve cloud services, including subcontracts for commercial items) (Oct 2016)

DFAR 252.244-7000, **Subcontracts for Commercial Items** (Jun 2013)

DFAR 252.246-7000, **Material Inspection and Receiving Report** (Mar 2008)

DFAR 252.246-7003, **Notification of Potential Safety Issues** (Jun 2013)

DFAR 252.246-7007, **Contractor Counterfeit Electronic Part Detection and Avoidance System** (Aug 2016)

DFAR 252.246-7008, **Sources of Electronic Parts** (May 2018)

DFAR 252.247-7023, **Transportation of Supplies by Sea** (Applicable ONLY to first tier subcontractors for construction, non-commercial items and commercial items that are drop shipped directly to the Government or that are in direct support of specific military operations) (APR 2014)

DFAR 252.247-7024 **Notification of Transportation of Supplies by Sea** (Mar 2000)

34. SUPPLY CHAIN SECURITY

For those Items that are warehoused and/or shipped by the Seller to/from the United States and its insular possessions on Buyer's behalf where Buyer is the US Importer or Exporter of Record (also known as **US Principal Party in Interest – PPI**), Seller agrees to comply with the supply chain security requirements from the Point of Origin as provided below. The Point of Origin is the site where such Items are assembled, manufactured, packaged and shipped.

Seller shall include this provision with applicable Subcontractors. For purposes of this provision, Subcontractors shall be defined as those sub-tier manufacturers or suppliers from which the shipment of Items is shipped directly from said manufacturers or supplier's facilities to Buyer's agreed upon Consignee, including any direct or sub-tier suppliers engaged in packaging or transport of Buyer shipments (including but not limited to freight forwarders, third-party logistic companies, packagers). Seller shall be responsible to Buyer for any breach of such requirement by its subcontractor.

1. **Supply Chain Security Program Participation:** Seller is encouraged to participate in national supply chain security programs including, but not limited to the Customs-Trade Partnership Against Terrorism (**C-TPAT**), Authorized Economic Operator and equivalent programs. Seller shall notify Buyer to the extent it participates in such programs and the countries of participation and initiate monitoring when applicable. Seller shall provide Buyer with prompt notice of any changes to its supply chain security program status at supplychainsecurity@boeing.com.
2. **Subcontractor Selection Process:** Seller shall have documented processes for the selection of its Subcontractors. The process shall ensure that such Subcontractors maintain adequate security controls and procedures and verify subcontractor compliance to the identified security controls.
3. **Security Awareness Program:** Seller will implement a Security Awareness Program including awareness and understanding of the U.S. C-TPAT program, recognizing internal conspiracies, maintaining cargo integrity, and determining and addressing unauthorized access. The Security Awareness Program should encourage active employee participation in security controls. Seller shall ensure that key personnel receive regular training which shall be no less than once per year on security procedures and requirements. Seller shall submit evidence of such Security Awareness training upon Buyer's request.
4. **Security Controls and Procedures:** Seller will maintain adequate security controls and procedures.
 - a. **Physical Security:** Seller must protect facilities against unauthorized access including but not limited to cargo handling and storage facilities which shall have physical security deterrents. Seller will ensure that:
 - i. All entry and exit points for vehicles and personnel are controlled.
 - ii. All external and internal windows, gates, and doors through which unauthorized personnel could access the facility or cargo storage areas are secured with locking devices.
 - iii. Areas within and around the facility are adequately illuminated to deter unauthorized access.
 - iv. Private passenger vehicles are prohibited from parking in or adjacent to cargo handling and storage areas, and conveyances.
 - v. Where security technology is utilized (including alarms, access control devices, and video surveillance systems such as Closed Caption Television Cameras (CCTVs)) appropriate and written policies governing the use, maintenance, and protection of such technology is in place.
 - b. **Access controls:** Seller will prevent unauthorized entry into facilities using access controls which may include but are not limited to badge readers, locks, key cards, or guards
 - i. Seller will positively identify all persons at all points of entry to facilities.
 - ii. Seller will maintain adequate controls for the issuance and removal of employee, visitor and vendor identification badges, if utilized.
 - iii. Upon arrival, Seller will require photo identification verification for all non-employee visitors.
 - c. **Personnel Security and Verification:** Seller will screen prospective employees consistent with local regulations and verify employment application information prior to employment.
 - d. **Ocean Container and Truck Trailer Security:** Seller will maintain container and trailer security to protect against the introduction of unauthorized material and/or persons into shipments. Loading/stuffing of cargo should be supervised by security officer or designated personnel.
 - i. **Ocean Container and Truck Trailer Inspection:** Seller will inspect all ocean containers or truck trailers prior to stuffing.
 1. Inspections must include:
 - a. Review of the reliability of the locking mechanisms of all doors and external hardware
 - b. Examination for visible agricultural pests
 - c. Confirmation that structures have not been modified to conceal contraband
 2. Inspections should be documented on a checklist including:
 - a. Container/Trailer/IIT number
 - b. Date of Inspection
 - c. Time of Inspection
 - d. Name of employee conducting inspection
 - e. Specific areas of the IIT that were inspected
 - f. Signature of personnel supervising the inspection of container
 - ii. **Ocean Container and Truck Trailer Seals:** Properly seal and secure shipping containers and trailers at the point of stuffing using the VVTT process (that is, View, Verify, Tug, Twist). Seller will affix a high security seal to all access doors on truck trailers (from Canada or Mexico) and ocean containers bound for the U.S.
 1. Seals must meet or exceed the current PAS ISO 17712 standard for high security seals
 2. When containers or trailers are picked up or stopped, the seal number must be confirmed to match what is on the shipping documentation
 3. If a seal is broken, Seller will immediately notify Buyer and indicate when it was broken, who broke it, and the replacement seal number
 4. Any seal broken, altered or tampered with must be held in order to aid investigation
 - iii. **Ocean Container and Truck Trailer Storage:** Seller will store empty or stuffed ocean containers and truck trailers in a secure area to prevent unauthorized access and/or manipulation.
 - e. **Information Technology (IT) Security:** Seller will maintain IT security measures to ensure all automated systems are protected from unauthorized access.
 - i. Seller will use individually assigned accounts that require a periodic change of password for all automated systems.
 - ii. Seller will maintain a system to identify the abuse of IT resources including but not limited to improper access, tampering or altering of business data and will discipline violators.
 - iii. Seller will install and maintain updated software/hardware protection sufficient against common cybersecurity threats.
 - f. **Procedural Security:** Seller will maintain, document, implement and communicate to all employees the following security procedures
 - i. Procedures for the issuance, removal and changing of access devices.

- ii. Procedures to identify and challenge unauthorized or unidentified persons
 - iii. Procedures to remove identification, facility, and system access for terminated employees.
 - iv. Procedures for IT security and standards.
 - v. Procedures governing the use, maintenance and protection of security technology.
 - vi. Procedures to verify application information for potential employees.
 - vii. Procedures for employees to report security incidents and/or suspicious behavior.
 - viii. Procedures for the inspection of ocean containers or truck trailers, including policies for agricultural and security inspections, prior to stuffing.
 - ix. Procedures to secure cargo staging areas including protection from unauthorized access and prevention of pest contamination as well as inspection for visible pest contamination on a regular basis
 - x. Procedures to control, manage and record the issuance and use of high security bolt seals for ocean containers and truck trailers. Such procedures must stipulate how seals are to be controlled and affixed to loaded containers and shall include procedures for recognizing and reporting compromised seals or containers to US Customs or the appropriate foreign authority and Boeing at supplychainsecurity@boeing.com.
 - xi. Procedures to identify any party on denied party lists maintained by the Department of Commerce/Bureau of Industry and Security (**BIS**), the Department of State/Directorate of Defense Trade Controls (**DDTC**), and the Department of Treasury/Office of Foreign Assets Control (**OFAC**).
 - xii. Procedures for ensuring that information transmitted/received to/from service providers, subcontractors and agents, is reported accurately and timely
 - xiii. Procedures for ensuring that all information used in the preparation of merchandise/cargo for export (EEL or other required export form), is legible, complete, accurate, and protected against the exchange, loss or introduction of erroneous information
- g. **Conveyance Security:** When Seller is performing or subcontracting conveyance services, conveyance and container integrity shall be maintained while the conveyance is in route transporting cargo from origin to destination, including, but not limited to, tracking and monitoring activity logs, a documented verification process, and driver notification of any abnormalities with the conveyance and/or container.
- 5. Seller will complete and return to Buyer any Security Questionnaires requested by Buyer within 30 days of receipt.
 - 6. Seller will, within 30 days of Buyer's request, provide Buyer with a detailed mapping for planned routings and identify any subcontractors involved in the transport of Buyer shipments. If there are any long-term changes to supply chain routings or routing subcontractors, Seller shall communicate such changes to Buyer within 10 business days of such change.
 - 7. Seller and its subcontractors and agents shall be subject to periodic site assessments by Buyer during normal operating hours, to confirm compliance with C-TPAT Security Guidelines. Seller and its subcontractors and agents shall provide a corrective action plan within 30 days of Buyer's request.
 - 8. Seller shall notify Buyer at supplychainsecurity@boeing.com of any actual or suspected breach of security involving Buyer's cargo in Seller or subcontractor's control within 24-hours of incident discovery. This shall include cargo theft, or tampering by unauthorized third parties with the cargo and/or manifests. When applicable, Seller and its subcontractors and agents will verify that their business partners and parties involved in export transactions are not listed as denied parties. Entities identified as denied parties on prohibited lists maintained by BIS, DDTC, and OFAC must be reported immediately to Buyer within 24 hours of discovery.

In the event Buyer identifies new or increased threats or risks to the supply chain, Buyer may request additional security measures from the Seller to ensure the security of the supply chain.

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