

# ADDITIONAL STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS



**Day&Zimmermann**

## **2.1 DEPARTMENT OF LABOR REGULATIONS – Title 41 of the Code of Federal Regulations**

The following Equal Opportunity Clauses are incorporated into this Purchase Order as indicated:

60-1.4(a) The Seller shall abide by the requirements of 41 CFR 60-1.4(a). This regulation applies to all Purchase Orders regardless of value of the Purchase Order, and Seller shall flow this clause to all lower tier suppliers. This regulation prohibits discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. This regulation requires that contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. 60-300.5(a) The Seller shall abide by the requirements of 41 CFR 60-300.5(a). This regulation applies for contracts, subcontracts or purchase orders of \$100,000 or more, and Seller shall flow this clause to its lower tier suppliers accordingly. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

60-741.5(a) The Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation applies for contracts, subcontracts or purchase orders of \$10,000 or more, except that subpart C of Part 40-741 (regarding affirmative action plans) only applies to contracts, subcontracts or purchase orders of \$50,000 or more. Seller shall flow this clause to its lower tier suppliers accordingly. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

## **SUBCONTRACT DELIVERABLES**

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or Prime Contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or Prime Contract. Seller further hereby agrees to deliver the Deliverable Materials under this Order with the appropriate markings required by the Government regulations incorporated into this Order.

## **INDEMNIFICATION**

"The Parties shall indemnify, defend, and hold harmless the Indemnitees, as defined in clause 25 above, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including attorneys' fees), arising out of or in connection with any actual, or alleged gross negligence or willful misconduct of the Party related to the work to be performed, services to be provided, or Products to be sold by the Party hereunder; or any act or omission by the Party to the extent resulting from the gross negligence or willful misconduct of the Party, its agents, employees, or subcontractors (except to any extent otherwise expressly provided for elsewhere within this Order); or arising out of or in connection with the Party's violation of any applicable laws, executive order or regulation."

## **EXCUSABLE DELAY – FORCE MAJEURE**

Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party or its subcontractors. In the event that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above, then the Party whose performance is so affected shall immediately notify the other Party's Authorized Representative in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and at Buyer's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or if all other options cannot work with the required schedule or the prime contract is terminated this Order may be terminated for convenience.

## **LABOR DISPUTES**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer's Authorized Representative and provide all relevant information including, but not limited to, nature of dispute, labor organizations involved, contingency plans regarding the protection of Buyer's Order, and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

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## COMPLIANCE WITH LAWS

A. Each Party shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances

B. Anti-Corruption Compliance. Each Party represents, warrants and covenants that:

1. It has not and will not, directly or indirectly, pay, promise, offer, or authorize the payment of any money or anything of value in connection with this Order to: (i) an officer, employee, agent or representative of any government, including any department, agency, or instrumentality thereof or any person acting in an official capacity thereof; (ii) a candidate for political office, any political party or any official of a political party; or (iii) any other person or entity while knowing or having reason to know that all or any portion of such payment or thing of value will be offered, given or promised, directly or indirectly, to any person or entity for the purpose of assisting Buyer in obtaining or retaining business, or an improper business advantage. Without limiting the generality of the foregoing, neither Party shall not directly or indirectly, pay, promise, offer, or authorize the payment of any facilitating payment intended to expedite or secure performance of a routine governmental action, such as, customs clearance on behalf of Buyer.
2. No gifts, travel expenses, business courtesies, hospitalities or entertainment of any nature have been or will be accepted or made in connection with this Order where the intent of was, or is, to unlawfully influence the recipient of the gift, travel expense, business courtesy, hospitality or entertainment. Seller also represents that any gifts, travel expenses, business courtesies, hospitalities or entertainment offered or provided shall meet the following conditions:
  - i. be permitted under the U.S. Foreign Corrupt Practices Act (FCPA) and the laws and regulations of the country in which this Order will be performed;
  - ii. be consistent with applicable social and ethical standards and accepted business practices;
  - iii. be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and
  - iv. be of such nature that its disclosure will not cause embarrassment for Buyer.
3. Breach of any of the foregoing provisions of subparagraphs C.1 through C.3. of this clause by Seller shall be considered an irreparable material breach of this Order and shall entitle Buyer to terminate this Order immediately without compensation to Seller.
4. Each Party shall comply with the requirements of 41 CFR 60-1.4(a). This regulation applies to all Orders regardless of value of the Order, and Seller shall flow this clause to all lower tier suppliers. This regulation prohibits discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

## NOTIFICATION OF STATUS CHANGES

- A. By accepting this Order, Seller certifies that all Seller qualification and business information, representations and certifications applicable to this Order remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer's Authorized Representative revised representations and certifications prior to taking any action indicating acceptance as stated on the face of this Order.
- B. Seller agrees to provide prompt notification to Buyer's Authorized Representative of any event or change in circumstances that could affect Seller's performance under this Order such as ineligibility to contract with U.S.G., debarment, assignment of consent agreement, designation under U.S. or foreign sanctions laws and regulations, expiration or cancellation of ITAR registration, potential violation of Export and Sanctions Laws and Regulations (or authorizations issued thereunder), initiation or existence of a U.S.G. investigation, change in place of performance, decrease in manufacturing capacity, diminishing manufacturing sources or material shortages, increase in production requirements, labor reductions, financial or organizational conflicts of interest, and significant financial conditions requiring any of the preceding changes.
- C. Sellers that have provided anti-corruption compliance due diligence information (e.g., related to Seller's ownership and personnel, subsidiaries and third parties, including but not limited to Buyer's due diligence questionnaire, and related certifications) to a Buyer representative or through Buyer's *Global Trust* website shall provide Buyer with prompt notification and details of any changes to its owners, officers, directors or other information contained in such due diligence materials, and agrees to promptly cooperate with Buyer and provide additional information reasonably requested related to such changed information. In the event of a material change to the owners, offices, directors, or other information contained in the due diligence material supplied to Buyer, Buyer reserves the right to suspend performance under this Order by providing written notice to Seller in order for Buyer to conduct anti-corruption due diligence upon such changed circumstances.
- D. Seller shall notify Buyer of any proposed change in Control within thirty (30) days prior to such event, if permitted by

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any related confidentiality agreement. The notice shall describe in reasonable detail the proposed transaction structure and any proposed changes to management, operations, domicile, key locations, the board of directors and/or ownership (along with a commitment to cooperate with Buyer and provide additional information reasonably requested related to such proposed change in Control). Seller shall not effect a change in Control without prior, written consent from Buyer, such consent not to be unreasonably withheld. For purposes of this Order, "Control" means the power, directly or indirectly, to (a) vote more than fifty percent of the securities that have ordinary voting power for the election of Seller's directors; or (b) direct, or cause the direction of, the management and policies of Seller whether by voting power, contract, or otherwise. If a Person or Entity obtains "Control" by acquiring more than fifty percent of the securities that have ordinary voting power for the election of Seller's directors, that acquisition may be accomplished by one or multiple transfers. For purposes of this Order, "Person or Entity" means a natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, or other organization, whether or not a legal entity, and a government or agency or political subdivision of that entity.

- E. Seller shall provide written notification to Buyer prior to making any changes to Seller's tooling, facilities, materials, or processes, and/or shall provide written notification to Buyer upon becoming aware of any such changes by Seller's Subcontractors at any tier, that could affect Seller's performance under this Order. This requirement includes changes to fabrication, assembly, handling, inspection, Acceptance, testing, manufacturing location, parts, materials, or suppliers. Seller shall notify Buyer of any pending or contemplated future action to discontinue Products purchased pursuant to this Order and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the Products. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such Products with deliveries not to exceed one hundred eighty (180) days after the last time buy date. Seller shall flow down to Subcontractor(s) the requirements of this Clause and all other applicable flow down provisions.
- F. Failure to provide the notice under this clause shall be deemed a material breach of this Order.

### **TERMINATION FOR DEFAULT**

- A. Subject to paragraphs C and D below, Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:
1. Fails to deliver the Products or to perform the Services within the time specified in this Order or any extension;
  2. Fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of ten (10) days after receipt of the notice from Buyer specifying Seller's failure to perform; or
  3. Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.
- B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Products or Services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those Products or Services. However, Seller shall continue the work not terminated. In addition, Buyer may rework or repair any Product or re-perform any Service, at Seller's cost.
- C. If the failure to perform is caused by the default of a subcontractor of Seller at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted Products or Services were obtainable from other sources in sufficient time for Seller to meet the required delivery schedule.
- D. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Products, and (2) partially completed Products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- E. Buyer shall pay the Order price for completed Products delivered or Services performed and Accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and Accepted and for the protection and preservation of the property.
- F. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held

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by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

- G. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Order.

## PROHIBITED ACTIVITIES AND CONTACTS

A. Activity Prohibitions. For Sellers delivering Products or performing Services outside of the U.S., unless specifically authorized in writing by Buyer, Seller shall not engage in any of the following activities on behalf of Buyer under this Order: acting as an agent of Buyer; marketing or sales promotion; lobbying; freight forwarding; consulting services; performing offset (industrial participation) consulting or brokering services; acting as a distributor or reseller; or activity as a joint venture party.

B. Contact Prohibitions. For Sellers delivering Products or performing Services outside of the U.S., unless specifically authorized in writing by Buyer, Seller shall not contact, either directly or indirectly, public officials of any country other than the U.S., United Kingdom, Canada, Australia, Belgium, Denmark, Netherlands, New Zealand, Norway, Sweden, Germany, France, or Italy in furtherance of its performance on behalf of Buyer under this Order.

C. Prohibition Against Providing Certain Telecommunications and Video Surveillance Services or Equipment

1. Definitions. As used in this clause—

i. “Covered Article” means any Product or Service that—

- a. Is produced by a Covered Entity;
- b. Includes any product or service produced in whole or in part by a Covered Entity; or
- c. Contains components using any product produced in whole or in part by a Covered Entity.

ii. “Covered Entity” means—

- a. Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- b. Any entity designated in accordance with Section 889(f)(3)(D) of the National Defense Authorization Act of 2019; and
- c. Any successor entity to any or all of these entities;

2. Prohibition. The Seller shall not deliver any Covered Article to Buyer under this Order.

3. Reporting requirement

In the event, notwithstanding the above prohibition, that the Seller subsequently determines that a Covered Article was provided to the Buyer during performance of the Order, or the Seller is notified of such by a supplier at any tier or any other sources of the same, the Seller shall immediately notify the Buyer, in writing, and include the following information: supplier name, brand, model number (Original Equipment Manufacturer (OEM) number, manufacturing part number, or wholesaler number); item description, and any readily available information about mitigation actions undertaken or recommended.

Within 10 business days of submitting such notification, Seller shall provide any further available information about mitigation actions undertaken or recommended, including the efforts it undertook to prevent use or submission of a Covered Article, any reasons that led to the use or submission of the Covered Article, and any additional efforts that will be incorporated to prevent future use or submission of the Covered Article(s).

4. Breach of any of the foregoing provisions of subparagraphs 1-3 of this clause by Seller shall be considered an irreparable material breach of this Order and shall entitle Buyer to terminate this Order immediately without compensation to Seller.

5. Subcontracts. Seller shall insert the substance of this clause, including this paragraph 4, in any lower tier subcontract.

## RELEASE OF INFORMATION AND ADVERTISING

A. Except as required by law, Seller shall not release to anyone outside Seller's organization any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof without the prior written approval of Buyer. Requests for approval shall be made at least fifteen (15) days before the proposed date for release and shall identify the specific information to be released, the medium to be used, and the purpose for the release. Additionally, Seller shall not use the name “Northrop Grumman” or any other Buyer trade name, any Products, parts thereof or replicas of Products, or in any other way identify Buyer in any advertisement, display, news release, or other disclosure without Buyer's prior written consent concerning this Order. The Parties agree that in the event a news release is so approved and made, such news will recognize Buyer and Seller.

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B. The Seller agrees to insert the substance of this clause, including this sentence, in any lower tier subcontract. Seller shall submit requests for authorization to the Buyer.

### **ANTI-TRAFFICKING IN PERSONS**

A. The Parties are prohibited from engaging in activities that support or promote trafficking in persons, including, but not limited to, any of the following:

1. Trafficking in persons, including, but not limited to the following:
  - a. sex trafficking; or
  - b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery.
2. The procurement of a commercial sex act;
3. The use of forced labor in the performance of company business;
4. The use of misleading or fraudulent recruitment activities;
5. Charging employees recruitment fees;
6. Failing to pay for the return transportation at the end of employment for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working;
7. Providing or arranging housing that fails to meet the host country housing and safety standards; or
8. If required, failing to provide an employment contract, recruitment agreement, or similar work document in writing, in the individual's native language and prior to the individual departing from his or her country of origin.

B. The Parties represent that they shall abide by and comply with the requirements of this clause. Further, Seller shall require its employees, agents, contract laborers and subcontractors to abide by and comply with the requirements of this clause.

C. Seller acknowledges that if Seller or any of its employees, agents, or contract labor engages in any of the prohibited activities in this clause, this Order is subject to termination.

D. Whenever Seller has knowledge, whether substantiated or not, that any actual or suspected violation of this clause has occurred, Seller shall immediately give written notice to Buyer's Authorized Representative and provide all relevant information including, but not limited to, the nature of the actual or suspected violation.

E. Seller shall provide its full cooperation during any subsequent investigation of the actual or suspected violation by Buyer, Buyer's representative, or cognizant government agency. Seller's cooperation shall include, but not be limited to, permitting inspection of its work sites, offices, and documentation, as necessary to support any investigation.

F. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract or labor contract.

### **SUSPECT/COUNTERFEIT PARTS**

A. This clause is applicable to all Orders. If DFARS 252.246-7007 and DFARS 252.246-7008 are also applicable to this Order, the provisions of paragraphs (a) – (e) of DFARS 252.246-7007, including its definition of "electronic parts," are incorporated in this paragraph by reference and "Contracting Officer" shall mean "Buyer". Seller shall establish and maintain a material authenticity process that ensures the requirements of these clauses or other authenticity requirements in this Order are met. Seller's obligation to substantiate authenticity shall survive Acceptance of and payment for Products delivered under this Order.

B. Seller shall not furnish suspect counterfeit or counterfeit parts to Buyer under this Order. All material delivered under this Order shall be authentic and traceable to the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Electronic parts shall not be acquired from brokers unless approved in advance in writing by Buyer. Seller shall immediately notify Buyer if Seller cannot provide parts, components, and/or assemblies traceable to the original component manufacturer or the original equipment manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate this Order at no cost to Buyer or require specific material validation test and inspection protocol requirements to Seller.

C. If suspect counterfeit or counterfeit parts are furnished under this Order and are found in any of the Products delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer. Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such suspect/counterfeit parts, of

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reinserting replacement parts and of any testing or validation necessitated by the reinstallation of Seller's Products after suspect/counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause agreed upon between Buyer and Seller in this Order and are in addition to any remedies Buyer may have at law, equity or otherwise under this Order. At Buyer's request, Seller shall return any removed suspect counterfeit or counterfeit parts to Buyer in order that Buyer may turn such parts over to its U.S.G. customer for further investigation. For purposes of this clause, Seller agrees that any U.S.G. directive/information or GIDEP alert, indicating that such parts are suspect counterfeit or counterfeit, shall be deemed definitive evidence that Seller's Products contain suspect counterfeit or counterfeit parts.

- D. Seller agrees to insert the substance of this clause, including this sentence, in any lower tier subcontract.

### **INSPECTION**

- A. Buyer and its customer may inspect and test material, work in progress, Products and/or Services at mutually agreed times and places (consent shall not be unreasonably withheld) during manufacture and otherwise. No inspection (including source inspection), test, approval (including design approval), or Acceptance of Products or Services, or failure to inspect and Accept or reject Products or Services, shall relieve Seller from responsibility for any defects or other failure to meet the requirements of this Order, or for latent defects, fraud, such gross mistakes that amount to fraud, or Seller's warranty obligations, nor impose liability on Buyer. Buyer's rights under this provision are for the performance of this Order and do not entitle Buyer to access Seller's premises otherwise.
- B. Seller shall not substitute materials or accessories, even if Seller believes they are of superior quality, without written consent of Buyer.
- C. Unless otherwise stated in Buyer's specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this Order shall apply. If the Products are specifically manufactured for Buyer in accordance with drawings, designs, or specifications furnished by Buyer:
- (1) Seller shall provide and maintain an inspection and quality control system and provide access to Seller's facilities and applicable documented information including all lower-tier subcontractors' facilities used in performance of this Order at all reasonable times, and without additional charge, for inspection by Buyer's Customer and any applicable regulatory authority, and shall provide all tools, facilities, and assistance reasonably necessary for inspection relating to the performance of this Order; and (2) Seller shall maintain adequate and authenticated inspection and test documents which relate to work performed under this Order for a period of three (3) years after completion of this Order or as otherwise specified in this Order, and shall make such records available to Buyer upon request; (3) Seller shall supply Buyer with inspection and test reports, affidavits, certifications, technical documents generated or related to this Order, or any other documents as may reasonably be requested by Buyer; (4) Seller shall notify Buyer's Authorized Representative in writing of any changes in Product and/or process definition and obtain Buyer's written approval prior to proceeding; and (5) Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.
- D. Final inspection and Acceptance by Buyer shall be at point of receipt by Buyer, unless otherwise specified in this Order.
- E. Any proprietary information shared during the inspection or data review process will be held in accordance with the existing applicable NDA.

### **CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (CTPAT) PROGRAM**

- A. Buyer supports the U.S. Customs and Border Protection (CBP) in the CTPAT program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments to Buyer originating from off-shore of the U.S., or in drop shipments to Seller's sub-tier suppliers, Buyer's customers or other subcontractors originating from off-shore of the U.S. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are CTPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Seller shall contact Buyer's Authorized Representative for assistance in identifying transportation companies that are validated under the CTPAT program. Information about CTPAT can be found at [www.cbp.gov](http://www.cbp.gov).
- B. Ocean/Land Container Shipments. Seller agrees to ensure the physical integrity and security of all ocean/land containers

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under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, or weapons (including Weapons of mass destruction), or introduction of unauthorized personnel in transportation conveyances or containers. Seller's security measures must include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas. Staged ocean and land containers must be secured from unauthorized access, and the immediate surrounding areas must be inspected on a regular basis to ensure these areas remain free of visible pest contamination. Seller acknowledges that ocean and land border container shipments made under this Order must be with certified and validated transportation providers participating in their country's respective trade security program (Authorized Economic Operator, Partnership in Protection, Trusted Trader, CTPAT, or equivalent). Seller shall use International Standard Organization (ISO) 17712 high security seals and have written procedures that document and control access, distribution, controls in transit, and destruction of ISO 17712 seals. Transportation providers must notify the Buyer of the date, time, location, and reason any seal in transit is broken/replaced. Upon notification, Buyer, or its designee, may audit all pertinent records relating to the above and identify procedures in order to verify compliance with the requirements of this provision. Seller acknowledges that it has reviewed its supply chain security procedures and contractual terms with its transportation providers and by acceptance of this Order Seller certifies that its security procedures and transportation provider's contractual terms adhere to this clause and are in accordance with trade security requirements of its respective country.

## **INFORMATION OF BUYER AND SELLER**

- A. Unless expressly stated otherwise herein, the exchange of information under this Order shall be governed by any mutually agreed to NDAs, which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of this Order.
- B. Definitions:
1. "Information" means information disclosed by the Parties to support their performance under this Order.
  2. "Proprietary Information" means Information which (i) is provided or otherwise made available by Buyer (hereinafter the "Disclosing Party") to Seller (hereinafter the "Receiving Party"); and, (ii) is marked proprietary or bears a marking of like import. Information accessed or made available in electronic form shall be considered Proprietary Information if: (A) any display of the Information also displays a proprietary legend or (B) if such Information is accessed or made available to the Receiving Party via a secure website or portal.
  3. "Government Entity" means an agency of the U.S. Government or a foreign government.
  4. "Government Program" means a program that is instituted by a Government Entity.
  5. "Government Program Parties" means Parties who have contractual obligations under a Government Program.
- C. Receiving Party shall hold all Proprietary Information in confidence and restrict disclosure thereof to only its employees, contract labor and agents who have a need to know so that Receiving Party may perform its obligations under this Order and are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Order.
- D. Receiving Party agrees to use Disclosing Party's Proprietary Information only for purposes necessary for performing obligations under this Order and not for the benefit of any other Party. Receiving Party further hereby grants to Disclosing Party a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose any Information received from Seller for Buyer's performance of this Order and to Government Program Parties when a Government Entity requires Disclosing Party and Government Program Parties to coordinate or integrate work for the associated Government Program, and the Government Program Parties need to use Receiving Party Information to complete their contracts under the Government Program. The Government Program Parties must be under an obligation to (1) retain any restrictive markings on Seller's Information, (2) protect receiving Party's Information to the same degree as provided herein; and, (3) limit use of Receiving Party Information to performance of a contract under the Government Program. Except as required for the performance of this Order, Receiving Party may make no use, either directly or indirectly, of Disclosing Party's Proprietary Information without the prior written consent of Disclosing Party. Upon Disclosing Party's request, Receiving Party shall destroy or transfer to Disclosing Party all existing copies of Disclosing Party's Proprietary Information.
- E. Receiving Party agrees that all Information, drawings, specifications, Data, documents and materials heretofore or hereafter furnished or disclosed by Receiving Party ("Seller Information") to Buyer in connection with the placing or performance of this Order is furnished or disclosed as a part of the consideration for this Order; that Receiving Party Information is not, unless otherwise agreed to by Disclosing Party in writing, to be treated as confidential or proprietary; and that Seller shall assert no claims (other than for patent infringement) by reason of the use or disclosure of Receiving Party Information by Disclosing Party, its assigns, or its customers and Seller shall not place any restrictive markings on Receiving Party Information. Any agreement purporting to provide for the confidential treatment of, or limiting the use of or disclosure of, Receiving Party information, must be in writing and signed by

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Disclosing Party.

- F. Exceptions. Receiving Party shall not be liable hereunder for use or disclosure of Proprietary Information which occur after such Proprietary Information:
1. is or becomes publicly known through no wrongful act of Receiving Party; or
  2. is known to or in the possession of Receiving Party without restriction on disclosure or use through no wrongful act of Receiving Party, as evidenced by competent proof; or
  3. is rightfully received by Receiving Party from a third party without restriction and without breach of this Agreement; or
  4. is independently developed by Receiving Party without the use of or reference to the Proprietary Information.
- In addition, Receiving Party shall not be liable hereunder for use or disclosure of Proprietary Information if such Proprietary Information is disclosed to satisfy a legal order by a court of competent jurisdiction or governmental action; provided, however, that Receiving Party shall first advise Disclosing Party within sufficient time prior to the disclosure so that Disclosing Party has the opportunity to seek appropriate relief from the court or governmental order, and provided further that Receiving Party shall disclose only those portions of the Proprietary Information legally required to be disclosed and request confidential treatment of the Proprietary Information by the court or governmental entity.
- G. All documents and other tangible media (excluding Products) transferred in connection with this Order, together with any copies thereof, are and remain the property of Disclosing Party
- H. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly, by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by Disclosing Party or Disclosing Party's customer, except as specifically set forth herein.
- I. Receiving Party agrees that Disclosing Party's Information is valuable and unique, and that the loss resulting from unauthorized disclosure thereof may cause irreparable injury to Disclosing Party, which may not be adequately compensated in money damages. Seller, therefore, expressly agrees that Disclosing Party shall be entitled to seek injunctive and/or other equitable relief, in addition to any other remedies available to Disclosing Party for breach of this clause.
- J. A Party's obligations with respect to information or Data disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.
- K. Defend Trade Secrets Act provision – applicable only to individuals or to be flowed down to individuals. Pursuant to the Defend Trade Secrets Act of 2016, if Seller is an individual, Seller acknowledges that he/she shall not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Seller files a lawsuit for retaliation by Northrop Grumman for reporting a suspected violation of law, Seller may disclose the trade secret to Seller's attorney and may use the trade secret information in the court proceeding, so long as Seller (x) files any document containing the trade secret under seal and (y) does not disclose the trade secret, except pursuant to court order. Seller agrees to flow down this provision to all contract labor and agents of Seller who are authorized under this Agreement to receive Northrop Grumman Proprietary Information and who are individuals.
- L. The right to use information provisions provided under this clause 22 shall not be affected by termination or cancellation of this Order before performance in full of all Government Program contracts or other agreements through which Buyer needs to use Seller's Information to perform under such agreement. The limitations on the scope of use of Information under this clause 22 shall not be affected by termination or cancellation of this Order.

### **3.3 Certifications and Representations**

By entering into this Order, SELLER confirms that it has completed Buyer's Representations and Certifications form and that SELLER's completed form is included in this Order (including, without limitation, Buyer's Commercial Item Determination Form, if applicable). SELLER acknowledges that Buyer has relied upon SELLER's certifications and representations contained herein and in any written offer, proposal or quote, or periodic submission. By entering into an Order, SELLER republishes the certifications and representations submitted with its written offer, including any periodic submission to Buyer, and oral offers/quotations made at the request of Buyer, and SELLER makes those certifications and representations set forth in the FAR clauses referenced above. SELLER shall immediately notify Buyer of any change of status regarding any certification or representation.