

**LOCKHEED MARTIN –CANADA**

**CORPDOC 40 (CA)**

**GENERAL PROVISIONS - COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS**

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Unless expressly accepted in writing by LOCKHEED MARTIN, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are rejected by LOCKHEED MARTIN and have no effect.
- (d) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

**2. APPLICABLE LAWS**

- (a) Regardless of its place of negotiation, execution or performance, this Contract shall be governed by and construed in accordance with the law of the Province of Ontario, Canada, without regard to its conflict of law provisions.
- (b) SELLER, in the performance of this Contract, shall comply with all applicable local, provincial, and federal laws,

financing institution if LOCKHEED MARTIN is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of LOCKHEED MARTIN against SELLER. LOCKHEED MARTIN shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

#### **4. CHANGE IN CONTROL OF SELLER**

Prior to a potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change of control, SELLER will promptly notify LOCKHEED MARTIN in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as LOCKHEED MARTIN may request, consistent with applicable law and confidentiality restrictions.

#### **5. CHANGES**

(a) The LOCKHEED MARTIN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i)



## 9. COUNTERFEIT WORK

(a) The following definitions apply to this clause:

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

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

(b) SELLER shall not deliver Counterfeit Work or Suspect Counterfeit Work to LOCKHEED MARTIN under this Contract.

(c) SELLER shall only purchase products to be delivered or incorporated as Work to LOCKHEED MARTIN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. SELLER may use another source only if (i) the foregoing sources are unavailable, (ii) SELLER's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) SELLER obtains the advance written approval of LOCKHEED MARTIN.

(d) SELLER shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this Contract.

(e) SELLER shall immediately notify LOCKHEED MARTIN with the pertinent facts if SELLER becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by LOCKHEED MARTIN, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. SELLER, at its expense, shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.

(f) This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Contract addressing the authenticity of Work.

(g) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation LOCKHEED MARTIN's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of this Contract.



(e) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

## **12. DISPUTES**

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. With the exception of motions or actions for injunctive relief, the SELLER agrees to submit to the exclusive jurisdiction of the Province of Ontario, in any action brought by the parties concerning the Contract or the performance thereunder.

(b) Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any action or litigation directly or indirectly arising out of under or in connection with this Contract.

(c) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN.

## **13. ELECTRONIC CONTRACTING**

(2) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

**15. EXCUSABLE DELAY**

(a) SELLER shall not be in default for any failure or delay in performance of the Work hereunder to the extent such failure or delay is the result of an event that (i) was beyond the control of the Seller, (ii) could not reasonably have been foreseen, (iii) could not reasonably have been prevented by the Seller, and (iv) occurred without the fault or negligence of the Seller, such event being an Excusable Delay.

(b) SELLER shall not benefit from an Excusable Delay unless the SELLER advises LOCKHEED MARTIN in writing, within ten (10) calendar days of the start of the event that has resulted or is likely to result in an Excusable Delay, of the occurrence of the delay and provide (i) full details of the event causing the delay, (ii) an estimate of the length of the delay (iii) an estimate of the impact of the delay, and (iv) details of the steps SELLER has taken or intends to take to minimize the impact of the delay and/or recover lost time.







**20. INDEPENDENT CONTRACTOR RELATIONSHIP**

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

**21. INFORMATION ASSURANCE**

(a) Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER shall comply with the terms of any proprietary information agreement with LOCKHEED MARTIN and comply with all proprietary information markings and restrictive legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. SELLER shall not use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of LOCKHEED MARTIN. SELLER shall maintain data protection processes and systems sufficient to adequately protect LOCKHEED MARTIN provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information used in the performance of this Contract or provided by LOCKHEED MARTIN to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including

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(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of LOCKHEED MARTIN necessary to enable such Work to comply in all respects with Contract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

(e) Unless this Contract expressly provides otherwise, title to Work shall pass to LOCKHEED MARTIN upon final acceptance. If under this Contract any part of the price is payable before delivery, the ownership of all material allocated for the Contract shall vest in LOCKHEED MARTIN when it is so allocated and SELLER shall mark the material accordingly but it shall be at SELLER's risk until delivered to LOCKHEED MARTIN.

## **24. INSURANCE**

(a) SELLER and its subcontractors shall maintain for the performance of this Contract the following insurances:

(1) Workers' compensation insurance meeting the statutory requirements where Work will be performed;

(2) Employer's liability (EL) in the amount of \$1 million per each accident or per each employee for disease;

(3) Commercial general liability (CGL) including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually, or in such higher amounts as LOCKHEED MARTIN may require;

(4) Automobile liability (AL) insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit, or in such higher amounts as LOCKHEED MARTIN may require; and

(5) Such other insurance as LOCKHEED MARTIN may require.

(b) SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall have its' insurers name LOCKHEED MARTIN as an additional insured on the CGL and AL policies for the duration of this Contract. If requested, SELLER shall provide a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

## **25. INTELLECTUAL PROPERTY**

Paragraph (a) is NOT applicable for commercial off-the-shelf Work unless such Work is modified or redesigned pursuant to this Contract.

(a) SELLER agrees that LOCKHEED MARTIN shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived,

**26. LANGUAGE**

In the Province of Québec, the parties have agreed to draft this Purchase Order in the English language only. Dans la province de Québec, les parties ont consenti à rédiger ce bon de commande en langue anglaise seulement.

**27. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

**28. OFFSET CREDIT/INDUSTRIAL BENEFITS**



### **36. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of LOCKHEED MARTIN. SELLER shall not use "Lockheed Martin," "Lockheed Martin Corporation," "Lockheed Martin Canada" or any other trademark or logo owned by LOCKHEED MARTIN, in whatever shape or form, without the prior written consent of LOCKHEED MARTIN.

### **37. RETENTION OF RECORDS**

Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for six (6) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and

MARTIN with section 105 of the Income Tax Act (Canada) regulations and/or section 1015R Règlement de la Loi sur l'administration fiscale ( Québec), each payment by LOCKHEED MARTIN hereunder for services rendered in Canada



#### 44. TRAVEL COSTS

(a) All travel incurred by SELLER in the performance of this Contract is included within the Contract price and shall not be separately reimbursed by LOCKHEED MARTIN unless such travel is expressly authorized in writing in advance by LOCKHEED MARTIN's Procurement Representative.

(b) When travel is authorized under this Contract, SELLER shall be reimbursed only for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the National Joint Council Travel Directive



- (e)(1) Prior to entry on Premises, SELLER shall coordinate with LOCKHEED MARTIN to gain access. SELLER shall provide information reasonably required by LOCKHEED MARTIN to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.
- (2) SELLER personnel requiring access to Premises shall, prior to entry, be screened by SELLER at no charge to LOCKHEED MARTIN through the LOCKHEED MARTIN Contractor Screen Program, or otherwise screened by SELLER in a manner satisfactory to LOCKHEED MARTIN.
- (f) SELLER shall ensure that SELLER personnel: (i) do not remove LOCKHEED MARTIN, customer, or third party assets