

LOCKHEED MARTIN AERONAUTICS COMPANY
PRIME SUPPLEMENTAL FLOWDOWN TERMS AND CONDITIONS
FOR SUBCONTRACTS/PURCHASE ORDERS UNDER
PBL N00019-21-R-0073

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Original: March 29, 2022

The Terms and Conditions listed below are incorporated by reference and made a part of this Contract. Unless otherwise limited in this Contract, each document applies in its entirety.

In the event of a conflict between the version or date of a clause set forth in this document and the version or date of a clause set forth in the identified CorpDocs, the version or date of the clauses set forth in this document shall take precedence.

To the extent that any clause included in this document is inapplicable to the performance of this Contract, the Parties shall consider such clauses to be self-deleting and they shall not impose any obligations upon SELLER.

PART I. DELETIONS: The following clauses are deleted in their entirety from the applicable CorpDocs incorporated into this Contract:

RESERVED

PART II. MODIFICATIONS: The dates or versions of the following FAR, DFARS, and other agency clauses are modified as follows and are incorporated into the Contract:

RESERVED

PART III. ADDITIONS: The following FAR, DFARS, and other agency clauses are incorporated into this Contract in addition to those set out in the applicable CorpDocs:

FAR 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)

FAR 52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (JUN 2020) (Applies to subcontracts that exceed \$150,000 and in subcontracts in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions. Not applicable to Commercial Items as defined in FAR 2.101.)

FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014) (Applies if SELLER shall furnish items subject to this clause.) ("Contracting Officer" means "Lockheed Martin.")

FAR 52.229-8 TAXES – FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990) (In paragraph (b), "Contracting Officer" and "Government of the United States" mean "LOCKHEED MARTIN." The first blank is

completed with "any foreign government" and blank two with "any country". Not applicable to Commercial Items as defined in FAR 2.101.)

FAR 52.232-17 INTEREST (MAY 2014) ("Government" means "LOCKHEED MARTIN." Not applicable to Commercial Items as defined in FAR 2.101.)

FAR 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013) (Applicable to subcontracts where software or services will be retransferred to the Government.)

FAR 52.245-9 USE AND CHARGES (APR 2012) (Applies to subcontracts where Government property will be provided. Communications with the Government under this clause will be made through LOCKHEED MARTIN.)

FAR 52.246-15 CERTIFICATE OF CONFORMANCE (APR 1984) (Applicable if SELLER will make direct shipments to the Government and there is no intervening acceptance by LOCKHEED MARTIN.)

DFARS 252.204-7004 AWARENESS TRAINING FOR CONTRACTORS (FEB 2019) (Applies where performance requires routine physical access to a Federally-controlled facility or military installation.)

DFARS 252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991) (Applies where items SELLER is delivering contain precious metals.)

DFARS 252.209-7010 CRITICAL SAFETY ITEMS (AUG 2011)

DFARS 252.211-7006 PASSIVE RADIO FREQUENCY IDENTIFICATION (DEC 2019) (Applies to subcontracts where the subcontractor will make direct shipments meeting the criteria at FAR 211.275-2 to the Government of items covered by the clause.)

DFARS 252.211-7007 REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012) (Applies if SELLER will be in possession of Government property for the performance of this Contract.)

DFARS 252.211-7008 USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (SEP 2010) (Applies if SELLER will be in the possession of Government property for the performance of the Contract.)

DFARS 252.223-7006 PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS (SEP 2014) ("Government" means "LOCKHEED MARTIN and Government." Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.225-7027 RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003) (The reference to the clause in paragraph (a) means FAR 52.203-5. The blank in paragraph (b)(1) is completed with "any Government." Subparagraph (b)(2) is deleted.)

DFARS 252.225-7028 EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003) (Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.225-7040 CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (OCT 2015) (Applies if SELLER will deploy persons or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States. Communications with the Contracting Officer shall be made through LOCKHEED MARTIN.)

DFARS 252.225-7976 CONTRACTOR PERSONNEL PERFORMING IN JAPAN (DEVIATION 2018-00019) (AUG 2018) (Applies if SELLER will perform work in Japan.)

DFARS 252.225-7995 CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY (DEVIATION 2015-O0009) (SEP 2017) (Applies to subcontracts where subcontractor personnel are performing in the USCENTCOM AOR.)

DFARS 252.228-7001 GROUND AND FLIGHT RISK (JUN 2010) (In paragraph (a)(1)(i) "this Contract" means "the prime contract." The following is added at the beginning of the clause: "Communications between SELLER and the Government shall be made through LOCKHEED MARTIN. Any equitable adjustment provided for this clause shall be implemented in this Contract to the extent such adjustment is implemented in the prime contract." Subparagraphs (d)(2)(ii), (d)(3)(ii) and the last sentence of subparagraph (j)(2) are deleted. The provision of this clause relating to assumption of risk by the Government are not applicable to SELLER unless this Contract includes language stating the Government has agreed to assume such risk of loss. Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.229-7003 TAX EXEMPTIONS – ITALY (MAR 2012) (Applies if Work will be performed in Italy. The blank in paragraph (b) is completed with "TBD. Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.229-7006 VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (DEC 2011) (Applies if SELLER is a United Kingdom firm. "This Contract" means "the prime contract." Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.234-7004 COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2014) (Applies to contracts that exceed \$50 million. In paragraph (b), "Government" means "LOCKHEED MARTIN." Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.237-7023 CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010) (Applicable to all contracts for mission essential services. "Contracting Officer" means "LOCKHEED MARTIN." The term "Government" includes LOCKHEED MARTIN.)

DFARS 252.239-7001 INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008) (Applicable if SELLER personnel will access DoD information systems in performance of the subcontract.)

DFARS 252.239-7016 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991) (Applies if this Contract requires securing telecommunications. Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012) (Applicable to subcontracts exceeding \$150,000. "Government" means "LOCKHEED MARTIN." Not applicable to Commercial Items as defined in FAR 2.101.)

DFARS 252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012) (Applies to subcontracts where the items furnished by the subcontractor will be subject to serialized tracking.)

DFARS 252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN 2011) ("Contracting Officer" means "Lockheed Martin or Contracting Officer." In paragraphs (a) and (b) the references to the SBIR data rights clause are deleted.)

DFARS 252.234-7003 NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2014) (The cost reporting required by the clause applies to SELLER'S at any tier in excess of \$50,000,000.)

Part III. SECTION H – PRIME CONTRACT SPECIAL PROVISIONS

For purposes of this Section H, "Government" means the United States Government. The following Section H clauses are incorporated into the Contract in full-text:

H-3 – USE OF DATA OR SOFTWARE WITH LESS THAN GOVERNMENT PURPOSE RIGHTS

If the SELLER believes it to be in the best interest of the F-35 program to consider use or incorporation of any noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation with less than Government Purpose rights other than assertions previously accepted under SELLER's F-35 contracts, then the SELLER shall submit a written request for approval to the BUYER prior to use or incorporation. The request for approval shall describe:

1. alternatives evaluated;
2. the benefit to the F-35 program for using the noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation with less than Government Purpose Rights;
3. the name of the entity asserting less than Government Purpose Rights;
4. the basis for the assertion (per DFARS 252.227-7017), to include sufficient information to enable the BUYER to provide to the Contracting Officer to evaluate any listed assertions;
5. a Rough Order of Magnitude cost estimate to obtain a Government Purpose Rights license as defined in DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS and DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION.

BUYER shall provide timely notice of the Government's response upon receipt from the Contracting Officer. Nothing in this clause precludes the Government from challenging any data rights assertions pursuant to DFARS 252.227-7019 or DFARS 252.227-7037.

H-5 – PRESERVATION OF RIGHTS FOR TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION ACCESSED, DELIVERED, OR PROVIDED ELECTRONICALLY

Information, whether delivered pursuant to the Supplier Data Requirements List (SDRL) or provided in response to any other requirement contained in this contract, which would be deemed "technical data" under DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA-NONCOMMERCIAL ITEMS (FEB 2014), or "computer software" and "computer software documentation" under DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014), if it were delivered in written form, shall not lose its status as technical data, computer software, or computer software documentation solely because access by the Government, delivery by the Contractor, or provision by the Contractor is by electronic means. The rights of the Parties shall be as specified in DFARS 252.227-7013 and DFARS 252.227-7014.

H-8 – NAVAIR 5252.227-9511 DISCLOSURE, USE, AND PROTECTION OF PROPRIETARY INFORMATION (FEB 2009) (The term "prime contractor" means "SELLER.")

(a) During the performance of this Contract, the Government may use an independent services contractor (ISC), who is neither an agent nor employee of the Government. The ISC may be used to conduct reviews, evaluations, or independent verification and validations of technical documents submitted to the Government during performance.

(b) The use of an ISC is solely for the convenience of the Government. The ISC has no obligation to the prime contractor. The prime contractor is required to provide full cooperation, working facilities, and access to the ISC for the purposes stated in paragraph (a) above.

(c) Since the ISC is neither an employee nor agent of the Government, any findings, recommendations, analyses, or conclusions of such a contractor are not those of the Government.

(d) The prime contractor acknowledges that the Government has the right to use ISCs as stated in paragraph (a) above. It is possible that under such an arrangement the ISC may require access to or the use of information (other than restricted cost or pricing data), which is proprietary to the prime contractor.

(e) To protect any such proprietary information from disclosure or use, and to establish the respective rights and duties of both the ISC and prime contractor, the prime contractor agrees to enter into a direct agreement with any ISC as the Government requires. A properly executed copy (per FAR 9.505-4) of the agreement will be provided to the Procuring Contracting Officer.

H-16 – TAXES AND DUTIES

(a) The Contract prices include all applicable taxes and duties, as defined in FAR 52.229-6 TAXES – FOREIGN FIXED-PRICE CONTRACTS (FEB 2013) and FAR 52.229-8 TAXES – FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990), except for:

(1) Customs duties, import and export taxes, and similar charges imposed by Participants to the Joint Strike Fighter Production, Sustainment, and Follow-On Development Memorandum of Understanding (MOU) or Foreign Military Sales (FMS) customer of the F-35 Lightning II program;

(2) Value Added Taxes (VAT) or consumption taxes, imposed by the Country Concerned, as defined in FAR 52.229-6 and 52.229-8, on goods or services delivered in the Country Concerned under this Contract.

(b) If the Contractor is required to pay or bear any tax or duty specified in subparagraphs (a)(2) above, including any interest or penalty, the Contractor shall follow the procedures specified in FAR 52.229-6 TAXES – FOREIGN FIXED-PRICE CONTRACTS (FEB 2013) and FAR 52.229-8 TAXES – FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990).

(c) Nothing outside of exceptions listed above alleviates the Contractor from the requirements of FAR 52.229-6 or 52.229-8.

H-20 – NAVAIR 5252.228-9501 LIABILITY INSURANCE (MAR 1999) (Applies if SELLER will be performing work on a Government installation. Not applicable to Commercial Items as defined in FAR 2.101.)

The following types of insurance are required in accordance with the clause entitled, "FAR 52.228-7, "Insurance – Liability to Third Persons" and shall be maintained in the minimum amounts shown:

(a) Comprehensive General Liability: \$200,000 per person and \$500,000 per accident for bodily injury.

(b) Automobile Insurance: \$200,000 per person and \$500,000 per accident for bodily injury and \$500,000 per accident for property damage.

(c) Standard Workman's Compensation and Employer's Liability Insurance (or, where maritime employment is involved, Longshoremen's and Harbor Worker's Compensation Insurance) in the minimum amount of \$100,000.

(d) Aircraft public and passenger liability: \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability; \$200,000 per occurrence for property damage. Passenger bodily injury liability limits of \$200,000 per passenger, multiplied by the number of seats or number of passengers, whichever is greater.

H-22 – NAVAIR 5252.227-9507 NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (OCT 2005) (Not applicable to Commercial Items as defined in FAR 2.101.)

(a) Export of information contained herein, which includes release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of the law.

(b) For violation of export laws, the contractor, its employees, officials or agents are subject to:

- (1) Imprisonment and/or imposition of criminal fines; and
- (2) Suspension or debarment from future Government contracting actions.

(c) The Government shall not be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this Contract.

(d) The contractor shall include the provisions or paragraphs (a) through (c) above in any subcontracts awarded under this Contract.

H-32 RESTRICTION ON THE DELIVERY OR PROCUREMENT OF SUPPLIES AND SERVICES FROM THE REPUBLIC OF TURKEY (The term "contractor" means "SELLER.")

(a) *Definitions.*

- (1) "Component" means any item supplied to the Government as part of an end product including, without limitation, raw materials and intermediate assemblies.
- (2) "Covered article" means any end item, component, software, or service that-
 - (i) Is produced in Turkey or by a covered entity; or
 - (ii) Is a service provided in Turkey or by a covered entity.
- (3) "Covered entity" means an entity that is effectively owned or controlled by the Turkish government.
- (4) "Effectively owned or controlled" means that the Turkish government or any entity controlled by the Turkish government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the entity's officers or a majority of the entity's board of directors by any means, e.g., ownership, contract, or operation of the law (or equivalent power for unincorporated organizations).
- (5) "Entity controlled by the Turkish government" means
 - (i) Any domestic or foreign organization or corporation that is known to be effectively owned or controlled by the Turkish government; or
 - (ii) Any individual directly and openly, or known to the Contractor to be acting on behalf of the Turkish government.
- (6) "Purchase Order" means a mutually binding agreement between the Contractor and a subcontractor indicating types, definite quantities, and prices for products or services the subcontractor will provide to the Contractor.

(b) *Restrictions.*

The Contractor shall not enter into any Purchase Orders after 31 March 2020 that would result in the delivery of covered articles under this contract nor charge to this contract, either directly or indirectly, the costs of any covered article placed on a Purchase Order after 31 March 2020.

(c) *Reporting requirement.*

- (1) In the event the Contractor identifies a covered article provided to the Government during contract performance that was placed on a Purchase Order after 31 March 2020, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer the following information:
- (i) Within 10 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 20 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe 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 covered articles.
- (d) The Parties agree that no consideration shall be provided by the Contractor to the Government, or penalties imposed upon the Contractor for unknowingly being non-compliant to paragraph (b) above.
- (e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts, including subcontracts for the acquisition of commercial items.

H-35 ELECTRONIC BILL OF MATERIAL (EBOM) SUBMISSION (PROVISION)

The prime contractor (and all lower-tier suppliers with proposed values that exceed the TINA threshold) shall email their current, accurate, and complete Bill of Materials to the email address at JSFBOM@jsf.mil. If the files are too large for email submission, documents will be uploaded via DoDSAFE (<https://safe.apps.mil>) addressed to JSFBOM@jsf.mil. Each first tier supplier shall flow down this requirement to their suppliers, and require the flow down of this requirement to all subsequent tiers. The suppliers shall submit the BOM using Table 2, EBOM Template, which includes the following mandatory fields:

- Submitting Contractor – This is the supplier performing the upload
- Submitting Contractor’s CAGE Code
- System/Subsystem on F-35 Platform
- Next Higher-Level Assembly
- Part Number
- National Stock System Number (if available)
- Part Name/Nomenclature
- Vendor/Supplier
- Vendor/Supplier’s CAGE Code
- Unit of Measure
- Unit Price
- Quantity
- Procurement Date (if available)
- Need Date (if available)
- Basis of proposed price (examples: estimate, history, quote, purchase order, LTA)

Submitting Contractor	Submitting Contractor CAGE Code	System/Subsystem on F-35 Platform	Next Higher Level Assembly	P/N	NS N	Part Name/Nomenclature	Vendor/Supplier	Vendor/Supplier CAGE Code	Unit of Measure	U P	Q T Y	Procurement Date	Need Date	Basis of Price
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The BOM content must be current, accurate, and complete as of the earlier of the date of price agreement between the higher tier contractor and the supplier making the upload, or the date of price agreement between the prime and the Government. Supplier submittals at all tiers must be accomplished prior to the signing of the prime contractor's Certificate of Current Cost or Pricing Data. The supplier BOM submittal at all tiers are covered by the prime contractor's Certificate of Current Cost or Pricing Data.