

# **GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS**

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# GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS

## SECTION 1: GENERAL/ADMINISTRATIVE PROVISIONS

### 1. DEFINITIONS

- a) "ATAP" means the ATAP, Inc. legal entity as identified on the face of this Contract.
- b) "SELLER" means the party identified on the face of this Contract with whom ATAP is contracting. For the purposes of the "CUSTOMER COMMUNICATION" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.
- c) "Purchaser" or "Buyer" means the person authorized by ATAP's cognizant procurement organization to administer and/or execute this Contract.
- d) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments.
- e) "Customer" means the entity with whom ATAP has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of the "FURNISHED PROPERTY" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions of this Contract, "Customer" shall include any higher tier contractor(s) and the U.S. Government and/or End User.
- f) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- g) "Intellectual Property" shall mean any legally enforceable rights, worldwide under statute or common law in respect of inventive subject matter or original works of authorship, including, but not limited to, inventions, designs, whether registered or not, patents, copyrights (including mask works), trademarks and trade secrets, discoveries, improvements, technology, designs mask works, technical information, data, Software, business information and other information.
- h) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."
- i) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.
- j) "Work" means all required deliverables, articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Contract.

### 2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a) This Contract integrates, merges, and supersedes any contemporaneous and prior offers, understandings, 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) **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY ATAP AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY AN ATAP PROCUREMENT REPRESENTATIVE.**

- d) Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by ATAP. A change of control of SELLER shall constitute an impermissible assignment. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if ATAP is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of ATAP against SELLER. ATAP shall have the right to make settlements and/or adjustments in price without notice to the assignee. ATAP may freely assign this contract.

### 3. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special or DOD contract terms and conditions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) these terms and conditions; (5) statement of work; and (6) specifications or drawings.

### 4. CONTRACT DIRECTION/CHANGES

- a) Only the ATAP Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of ATAP. SELLER shall not implement any changes or modifications to this contract (including contract specifications and quality control provisions) without first having received written authorization to do so from ATAP's Procurement Representative.
- b) ATAP program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the ATAP Procurement Representative and shall not accept such direction or perform said action unless authorized by ATAP Procurement Representative.
- c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the ATAP Procurement Representative.
- d) ATAP may, at any time, exclusively by a written order signed by its Procurement Representative, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for ATAP in accordance with the drawings, designs, or specifications;
  - ii. Method of shipment or packing;
  - iii. Place of inspection, delivery or acceptance;
  - iv. Delivery schedules; and/or
  - v. Any other matters affecting this contract.

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vi. ATAP'S Procurement Representative may sometimes elect to attach ATAP'S own internal change documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order. The SELLER shall promptly review all changes to the part and/or service as specified in the Change Order and any Attachments, if any, and notify ATAP of any effect that the change may have on the performance of the contract.

e) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by SELLER for adjustment under this article must be asserted in writing to ATAP'S Procurement Representative no later than thirty (30) calendar days after the date of receipt by SELLER of the written change authorization or within such extension as ATAP may grant in writing; ATAP may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, SELLER will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of a change is included in SELLER'S claim for adjustment, ATAP shall have the right to direct the manner of disposition of such property. ATAP shall have the right to examine any of SELLER'S pertinent books and records for the purpose of verifying SELLER'S claim.

NOTE: Only ATAP'S Procurement Representative shall have the authority to direct or authorize changes or modifications to this contract. ATAP'S PROGRAM MANAGEMENT AND ENGINEERING PERSONNEL HAVE NO AUTHORITY TO MODIFY OR OTHERWISE TO DIRECT OR AUTHORIZE CHANGES TO THIS CONTRACT.

f) ATAP SHALL NOT BE LIABLE FOR ANY OF SELLER'S INCREASED COSTS OF PERFORMANCE THAT RESULT FROM SELLER'S IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT ATAP'S PROCUREMENT REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.

g) ATAP and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither ATAP nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

## 5. CUSTOMER COMMUNICATION

ATAP shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Contract or any Work thereunder or related thereto. Except as required by law, SELLER shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Contract or any Work thereunder or related thereto, without prior written approval from the ATAP Procurement Representative. SELLER shall promptly notify the ATAP Procurement Representative of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Contract or any Work thereunder or related thereto.

## 6. INFORMATION

a) Information provided by ATAP to SELLER remains the property of ATAP. SELLER shall comply with all proprietary information markings and restrictive legends applied by ATAP to anything provided hereunder to SELLER. SELLER shall not use any ATAP 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 ATAP.

b) If the parties have entered into a Proprietary Information Agreement pertaining to the Work of this Contract, the terms and conditions of such Proprietary Information Agreement shall govern the protection and exchange of proprietary information between the Parties.

c) SELLER shall not provide any proprietary information to ATAP without prior execution by ATAP of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.

d) 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, shall be made by SELLER without the prior written approval of ATAP Procurement Representative.

e) As ATAP and other Defense Prime Contractors have enhanced their cyber security defenses, attackers have expanded their targets to include the supply base, searching for weaknesses that they can exploit. SELLER will employ appropriate tools and practices to protect ATAP'S provided data and advise ATAP within 2 days if a cyber-attack has been detected which may have compromised ATAP'S data.

## 7. SURVIVABILITY

If this Contract expires, is completed or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- Applicable Laws
- Counterfeit Parts: Prevention and Notification
- Definitions
- Disputes/Jury Waiver
- Export Control
- Furnished Property
- Independent Contractor Relationship Information
- Entry on ATAP or Customer Property
- Intellectual Property
- Maintenance of Records
- Parts Obsolescence
- Warranty

## 8. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

## 9. PAYMENTS, TAXES, AND DUTIES

a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) ATAP'S receipt of SELLER'S accurate invoice in accordance with proper invoicing instructions as identified on the PO, or other master-type agreement; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work to the specified FOB Point. ATAP shall have a right of setoff against payments due or at issue under this Contract or any other contract between ATAP and SELLER.

b) Each payment made shall be subject to reduction to the extent of amounts which are found by ATAP not to have been properly payable and shall also be subject to reduction for overpayments.

c) Payment shall be deemed to have been made as of the date of mailing ATAP'S payment or electronic funds transfer.

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- d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

## 10. MAINTENANCE OF RECORDS

- a) Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for five (5) 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, quality processes and procedures, shipping and export, certifications, and receipt records.
- b) ATAP and its customer shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to ATAP on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

## 11. INDEPENDENT CONTRACTOR RELATIONSHIP

- a) SELLER's relationship to ATAP shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between ATAP and SELLER or ATAP and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of ATAP. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. ATAP assumes no liability for SELLER personnel.
- b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any ATAP benefit plan. SELLER shall provide and maintain all insurance and benefits required by law, including but not limited to workers' compensation insurance.

## SECTION 2: LAWS AND REGULATIONS

## 12. APPLICABLE LAWS

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract was issued, excluding its choice of law rules.
- b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.  
  
(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and

withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) ATAP is a federal government contractor subject to the nondiscrimination and affirmative action compliance requirements of Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. ATAP is committed to compliance with these nondiscrimination and affirmative action requirements. As part of our efforts to comply with these laws and their implementing regulations, we have developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, national origin, disability, veteran status, or any other reason prohibited by law.

In accordance with the implementing regulations of these laws ATAP's General Provisions serves as notification to SELLER about our nondiscrimination and affirmative action policies, and also "requests appropriate action" of SELLER to ensure full compliance throughout the subcontracting chain under related federal contract(s).

- i. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities), 41 C.F.R. Part 60-250.5(a) and Part 60-300.5(a) (covered veterans), and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.
- ii. This contractor and subcontractor shall abide by the requirements of 41 CFR 60 741.5(a). 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 (If this procurement is  $\geq$  \$10,000.) Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). 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 (if this procurement is  $\geq$  \$100,000).

(4) If: (i) ATAP's contract price or fee is reduced; (ii) ATAP's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on ATAP; or (iv) ATAP incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, ATAP may proceed as provided for in subparagraph (b)(5).

(5) Upon the occurrence of any of the circumstances identified in subparagraph (b)(4) above, ATAP may make an offset reduction of corresponding amounts (in whole or in part) due SELLER under this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

- c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ATAP hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to

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the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

- d) SELLER shall provide to ATAP with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) 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.
- e) For orders \$500,000 and above to be substantially performed outside of the United States: SELLER shall comply with the policy, controls, and reporting requirements as defined in U.S. Executive Order, 25 September 2012, Strengthen Protections Against Trafficking In Persons In Federal Contracts; Sec. 2. Anti-Trafficking Provisions subsection (2).

## 13. GRATUITIES/KICKBACKS/ETHICAL CONDUCT

- a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of ATAP with a view toward securing favorable treatment as a supplier.
- b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Contract exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

## 14. EXPORT CONTROL

- a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799aa-2, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app 2401-2420, the Export Administration Regulations, 15 C.F.B. 730-774, and regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595). SELLER shall obtain a required export licenses and agreements necessary to perform SELLER's Work, as applicable.
- b) SELLER shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. SELLER shall provide to ATAP within 30 days of submittal a copy of any anti-boycott report made to the U.S. Government that involves this Contract.
- c) Without limiting the foregoing, SELLER shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by ATAP and to any such data incorporated in documents generated by SELLER. Additionally, no disclosure of data furnished by ATAP can be made unless and until ATAP has considered the request and provided its written approval through contractually authorized channels. SELLER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

- d) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R.120.16.
- e) SELLER shall notify ATAP Procurement Representative if any use, sale, import or export by ATAP of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- f) SELLER shall immediately notify the ATAP Procurement Representative if SELLER is 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 government entity or agency.
- g) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- h) Where SELLER is a signatory under an ATAP export license or export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), SELLER shall provide immediate written notification to the ATAP Procurement Representative in the event of changed circumstances affecting said license or agreement.
- i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve ATAP of its obligations under this Contract. Provided SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by ATAP without additional cost or other liability.
- j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with the following:
  - i. The technical data shall be used only in performance of Work required by this Contract; and
  - ii. The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export controlled data apply to both data furnished by ATAP and to any such data incorporated in documents generated by SELLER; and
  - iii. Any rights in the data may not be acquired by SELLER or any other Non-U.S. Person; and

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- iv. SELLER shall return, or at ATAP's direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms.
- v. Unless otherwise expressly directed by ATAP, shall deliver the Work only to ATAP or to an agency of the U.S. Government.
- vi. In compliance with ITAR, SELLER is registered with the United States Department of State Defense Trade Controls.
- b) Records of all quality control inspection work by SELLER shall be kept complete and available to ATAP and its Customers.
- c) SELLER agrees to notify ATAP Procurement Representative of product that does not meet the requirements of this order that cannot be reworked to compliance. Written Approval will be required by ATAP Procurement Representative prior to SELLER's shipment of nonconforming material to ATAP. Additionally, SELLER shall notify ATAP Procurement Representative if SELLER discovers that previously delivered product does not meet the requirements of this order.
- d) SELLER agrees to notify ATAP Procurement Representative with changes in product and/or process which affect compliance with applicable Specifications, technical Data Sheets, or reliability of the product, changes of suppliers, and changes of manufacturing facility locations.

### 15. DISPUTES

- a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph (b) of this provision. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the ATAP Procurement Representative.
- b) ATAP and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, ATAP AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE OF ALABAMA; AND ATAP AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE OF ALABAMA WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.

### 16. WAIVER, APPROVAL AND REMEDIES

- a) Failure by ATAP to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of ATAP thereafter to enforce each and every such provision(s).
- b) ATAP's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- c) The rights and remedies of ATAP in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.
- e) All hardware, data, other documentation, tooling and equipment required by SELLER during the performance of this order shall be maintained under configuration control. ATAP'S approval of the drawing package shall constitute a baseline release for hardware fabrication. ATAP'S approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the SELLER shall not implement any change in design, processes, controls, parts or proprietary data released to ATAP thereafter to internal functions or second-tier suppliers without ATAP'S prior written approval.
- f) The SELLER shall submit Major Engineering Change Orders (ECO's) to ATAP for written approval prior to implementing any such changes. ATAP'S approval shall in no way relieve the SELLER from complying with the requirements of the order, nor shall approval relieve the SELLER's technical responsibility for the design. The SELLER shall further submit Minor ECO's for informational purposes. Any SELLER classification disagreements shall be referred to ATAP for a final decision.
- g) SELLER shall maintain a Foreign Object Debris/Damage (FOD) prevention program. When applicable, SELLER's FOD prevention program shall include:
  - i. The review of design and manufacturing processes to identify and eliminate foreign object entrapment areas and paths through which foreign objects can migrate.
  - ii. SELLER shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks.
  - iii. SELLER shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment.
  - iv. By delivering items to ATAP, SELLER shall be deemed to have certified to ATAP that such items are free from any foreign material that could result in FOD.

## SECTION 3: QUALITY/PRODUCT CONTROL PROVISIONS

### 17. QUALITY CONTROL SYSTEM

- a) SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times by ATAP, authorized Customer representatives, and Regulatory Authorities. SELLER agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.

### 18. TIMELY PERFORMANCE

- a) SELLER's timely performance is a critical element of this Contract.
- b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify ATAP, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- c) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal

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flow time unless there has been prior written consent by ATAP'S Procurement Representative.

## 19. INSPECTION AND ACCEPTANCE

- a) ATAP and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. ATAP shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- b) No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. ATAP'S final inspection and acceptance shall be at destination.
- c) If SELLER delivers non-conforming Work, ATAP may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.
- e) SELLER shall not tender finished goods to ATAP which have been returned from another customer without prior written approval from ATAP Procurement Representative. Such approval requests shall include a full explanation of SELLER's verification process for those goods. For returned goods to be considered for acceptance by ATAP, an Authorized/Franchised Distributor must include acceptance of returned goods for resale as part of its counterfeit/fraudulent parts risk management plan.

## 20. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION

- a) Definitions
    - i. **"Suspect Counterfeit Material"** means any material, product, or part that is suspected by testing, visual inspection or other information to be Counterfeit Material.
    - ii. **"Counterfeit Material"** means any material, component, part, assembly, sub-assembly, product and any other item forming part of the Supplies (together referred to as "Items" and separately as "Item") in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, Identity or characteristics have been misrepresented by the SELLER, manufacturer or a SELLER in the SELLER's supply chain. The term also includes approved Goods that have reached a design life limit or that have been damaged beyond possible repair, but are altered and misrepresented as acceptable, and/or have been used or reclaimed and misrepresented as new.
    - iii. **"Non-conforming Material"** means any material, component, part, assembly, sub-assembly, product and any other item forming part of the Supplies (together referred to as "Items" and separately as "Item") in which there is an indication by visual inspection, testing, or other information that it may not conform with the requirements, specifications, or standards listed within the Purchase Order for the Supply being delivered to the Purchaser.
  - b) The SELLER warrants that Counterfeit Material shall not be supplied to the Purchaser or installed in the Purchaser's products by the SELLER.
  - c) The SELLER warrants that only new, unused, Authentic, genuine and legitimate Items shall form part of the Supplies supplied to the Purchaser. Any deviation from this must be specified and agreed upon in writing between the Purchaser and the SELLER prior to delivery of Supplies.
  - d) The SELLER may only purchase or source Items directly from Original Component Manufacturers ("OCM"), OCM authorized (e.g. franchised) distributors or aftermarket manufacturers. Use, purchase or the sourcing of Items from non-OCM authorized independent distributors or brokers is not permitted unless first approved in writing by the Purchaser. If not previously approved and specified on the Purchase Order, the SELLER must present compelling support for its request to use such non OCM authorized SELLER's for the Purchaser's approval (including but not limited to OCM documentation that authenticates supply chain traceability of
- iv. **"Identity"** means any information which relates to the properties or characteristics of the Supplies including but not limited to the original manufacturer or SELLER's, trademarks or other intellectual property rights, part numbers, date codes, lot numbers, applied testing methods and results, inspections performed, documentation, warranties, origin, alterations, tampering, salvage, recycling, ownership history, packaging, physical condition, previous use and rejection.
  - v. **"Aftermarket Manufacturer"** means a manufacturer that meets one or both of the following criteria:
    - a. The manufacturer is authorized by the original manufacturer to produce and sell replacement materiel, usually due to an original manufacturer decision to discontinue production of materiel. Materiel supplied is produced from dies, molds, or other manufacturing equipment that has been
      1. transferred from the original manufacturer to the aftermarket manufacturer,
      2. produced by the aftermarket manufacturer using original manufacturer tooling and intellectual property (IP), or
      3. produced by the aftermarket manufacturer through redesign to match the original manufacturer's specifications without violating the original manufacturer's intellectual property rights (IPR), patents, or copyrights.
    - b. The manufacturer produces materiel by emulating or reverse-engineering obsolete materiel to satisfy continuing customer needs without violating the original manufacturer's intellectual property rights, patents, or copyrights.
  - vi. **"Authentic"** means any product, item, or service produced with legal right or authority granted by the legally authorized source.

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the parts to the OCM) and include in its request all necessary actions it shall take to ensure those Items thus procured are new, unused, authentic, genuine and legitimate Items.

- e) The SELLER shall maintain a method of traceability that ensures tracking of the supply chain back to the manufacturer of all Items included in the Supplies being supplied. This traceability method shall clearly identify the name and location of all supply chain intermediaries from the manufacturer to the direct source of each Item for the SELLER and shall include the manufacturer's batch identification for the Item such as but not limited to date codes, lot codes, serializations, or other batch identifications. Full supply chain traceability documentation includes but is not limited to OCM, Original Equipment Manufacturer ("OEM") and authorized (e.g. franchised) SELLER certificates of conformity, purchase orders and test/inspection data and/or certificates. The Purchase Order shall specify any such additional documentation (other than as specified in this condition) required by the Purchaser. Traceability documentation and records shall be retained in accordance with the Record Retention Requirement specified in these terms and conditions.
- f) If Counterfeit Material or Suspect Counterfeit Material are supplied or furnished under the Purchase Order such Supplies shall be impounded. The SELLER shall promptly replace such Supplies with Supplies acceptable to ATAP PROCUREMENT REPRESENTATIVE and the SELLER shall be liable for all costs relating to impoundment, removal and replacement. The Purchaser may notify and turn Counterfeit Material over to the relevant local or international Government authorities for investigation and the Purchaser reserves the right to withhold payment pending the results of such investigations.
- g) This clause applies in addition to any quality provision, Specification, Statement Of Work or other provision included in the Order addressing the authenticity of Supplies.
- h) Counterfeit Material, Suspect Counterfeit Material, or Non-conforming Material delivered or furnished to ATAP PROCUREMENT REPRESENTATIVE Procurement Representative under this Order are deemed nonconforming. If Seller becomes aware or suspects that it has furnished Counterfeit, suspect-Counterfeit, or sub-standard Goods to ATAP PROCUREMENT REPRESENTATIVE Procurement Representative under this Purchase Order, Seller shall notify ATAP PROCUREMENT REPRESENTATIVE Procurement Representative within two (2) business days and promptly replace, at Seller 's expense, such Goods with authentic, new and unused OEM or ATAP PROCUREMENT REPRESENTATIVE Procurement Representative-approved parts that conform to the requirements of this Purchase Order. Notwithstanding any other provisions of this Agreement, Seller shall be liable for all costs related to the replacement of such, including without limitation ATAP PROCUREMENT REPRESENTATIVE Procurement Representative's costs of removing such components, ATAP PROCUREMENT REPRESENTATIVE Procurement Representative cost of installing conforming components, and any testing or validation necessitated by the installation of conforming goods after the offending Components have been replaced. Notwithstanding any other provisions of this Agreement, any limitation of liability set forth in this Agreement shall not be applicable to this clause. The remedies contained in this article are in addition to any remedies ATAP PROCUREMENT REPRESENTATIVE Procurement Representative may have at law, equity, or under other provisions of this Purchase Order.

### 21. PACKING AND SHIPMENT

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

- b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the ATAP Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be FOB Destination.
- d) Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

### 22. PARTS OBSOLESCENCE

"Obsolete Electronic Part" means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

SUPPLIER shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified Electronic Parts throughout the product's lifecycle.

ATAP may desire to place additional orders for items purchased hereunder. SELLER shall provide ATAP with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

### 23. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, ATAP may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to the benefit of ATAP and its successors and Customer(s).

### 24. AWARENESS

The SELLER shall ensure that persons doing work under the SELLER's control are aware of their contribution to product or service conformity; their contribution to product safety; and the importance of ethical behavior.

Product Safety being defined as the state in which a product is able to perform to its designed or intended purpose without causing unacceptable risk of harm to persons or damage to property.

## SECTION 4: LIABILITY AND INDEMNIFICATION

### 25. INDEMNIFICATION

SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT ATAP'S ELECTION, DEFEND ATAP, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, ALL EXPENSES OF LITIGATION AND/OR



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SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, RELATED TO OR AS PART OF THE EXECUTION OF WORK TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.

suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in this Contract. ATAP'S only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed in accordance with the Contract schedule prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of ATAP, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

## 26. FURNISHED PROPERTY

- a) ATAP may provide to SELLER property owned by either ATAP or its Customer (Furnished Property), or require SELLER to acquire property to be used specifically for Work under this Contract (Acquired Property). Unless previously authorized in writing by the ATAP Procurement Representative, Furnished Property and/or Acquired Property shall be used only for the performance of this Contract.
- b) Title to Furnished Property and/or Acquired Property shall remain in ATAP or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property and/or Acquired Property to show its ownership.
- c) The Furnished Property shall be supplied in "as-is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify ATAP of, any loss or damage to Furnished Property and/or Acquired Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property and/or Acquired Property in accordance with good commercial practice. In the event of such loss or damage, SELLER shall immediately replace, reimburse, repair, and/or provide consideration to ATAP for such loss or damage as ATAP may require, at its sole option.
- d) At ATAP'S request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and/or Acquired Property and shall deliver or make such other disposal as may be directed by ATAP.

- ii. For other than specially performed Work: ATAP may terminate part or this entire Contract for its convenience by giving written notice to SELLER and ATAP'S only obligation to SELLER shall be payment of SELLER'S standard re-stocking or service charge, not to exceed ten (10) percent of the price of the terminated Work.
- iii. In either case, SELLER shall continue all Work not terminated.
- iv. In no event shall ATAP be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER'S termination claim shall be submitted within sixty (60) days from the effective date of the termination.

## b) Termination for Default

- i. ATAP, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as ATAP may authorize in writing) to cure any such failure after receipt of written notice from ATAP. Default involving delivery schedule delays shall not be subject to the cure provision.
- ii. ATAP shall not be liable to pay for any Work not accepted; however, ATAP may require SELLER to deliver to ATAP any supplies and materials, and drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. ATAP and SELLER shall agree on the amount of payment for these other deliverables.
- iii. SELLER shall continue all Work not terminated.
- iv. If after termination for default it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

## 27. INTELLECTUAL PROPERTY

- a) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- b) If an injunction is obtained against ATAP'S use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for ATAP and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. The indemnity and hold harmless provision of this Contract shall not be considered an allowable cost under any provisions of this Contract.

## 28. TERMINATION

- a) Termination for Convenience
  - i. For specially performed Work: ATAP may terminate part or this entire Contract for its convenience by giving written notice to SELLER. Upon receipt of such notice SELLER shall immediately: (i) cease work; (ii) prepare and submit to ATAP an itemization of all completed and partially completed deliverables and services; (iii) deliver to ATAP deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Contract; and (iv) deliver upon request any Work in process. SELLER shall use reasonable efforts to mitigate ATAP'S liability under this paragraph by, among other actions, accepting the return of, returning to its

## 29. INSURANCE

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of ATAP or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of ATAP), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to ATAP, and such other insurance as ATAP may reasonably require. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER'S agents, subcontractors or suppliers, SELLER'S obligation to indemnify and defend in accordance with this paragraph shall apply

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regardless of cause. SELLER shall provide to the ATAP Procurement Representative 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 procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name ATAP as an additional insured for the duration of this Contract. Property and Contractor's Equipment Insurance maintained pursuant to this paragraph shall be considered primary as respects the interest of ATAP and is not contributory with any insurance that ATAP may carry. "Subcontractor" as used in this subparagraph shall include SELLER's subcontractors at any tier.

### 30. STOP WORK ORDER

- a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from ATAP, or for such longer period of time as ATAP and SELLER may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) Within such period, ATAP shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with provision "Contract Direction/Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

### 31. UNITED STATES DOD FLOW DOWN CLAUSES

If the contract references a United States Department of Defense contract number, then the following clauses shall apply to the SELLER as applicable based on the clause total value limitations. The full text of these clauses may be found at <https://acquisition.gov/far/index.html>

**52.203-13**, Contractor Code of Business Ethics and Conduct (APR 2010) (41 U.S.C. 3509).

**52.219-8**, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

**52.222-17**, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

**52.222-26**, Equal Opportunity (MAR 2007) (E.O. 11246).

**52.222-35**, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212).

**52.222-36**, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

**52.222-37**, Employment Reports on Veterans (Jul 2014) (38 U.S.C. 4212).

**52.222-40**, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

**52.222-41**, Service Contract Labor Standards (May 2014), (41 U.S.C. chapter 67).

**52.222-50**, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

**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) (41 U.S.C. chapter 67.)

**52.222-53**, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)

**52.222-54**, Employment Eligibility Verification (Aug 2013).

**52.225-26**, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

**52.226-6**, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

**52.247-64**, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.