

GENERAL GOVERNMENT TERMS & CONDITIONS

GENGOV (CONTRACT UNDER U.S. GOVERNMENT PRIME CONTRACT)



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I. GENERAL

1. **DEFINITIONS.** As used throughout this Contract, including provisions incorporated by reference, the following terms shall have the meaning set forth below:
 - a. "Buyer" means Austal USA, LLC, the legal entity issuing this Contract.
 - b. "Buyer's Procurement Representative" means the person authorized by Buyer's cognizant procurement organization to administer and/or execute this Contract.
 - c. "Contract" means the aggregate combination of the Purchase Order, these GENGOV Terms and Conditions, Supplemental Terms and Conditions, Specifications, representations and certifications, and any other documents incorporated by reference within the Purchase Order or any of the items listed above. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the master agreement as well as the release document for the work to be performed.
 - d. "Contractor" means "Seller."
 - e. "Days" means calendar days, unless otherwise specified, and will include Saturdays, Sundays, and U.S. Federal holidays. However, if the last day falls on a Saturday, Sunday, or U.S. Federal holiday, then the period shall include the next business day. When used, "business day" excludes weekends and U.S. Federal holidays.
 - f. "FAR" means the Federal Acquisition Regulation.
 - g. "Goods" means supplies and/or services provided by Seller.
 - h. "Government" means the Government of the United States of America.
 - i. "Prime Contract" means the agreement between Buyer and its customer or between Buyer and its higher-tier contractor.
 - j. "Purchase Order" means any written instrument from Buyer for Goods that is designated a "Purchase Order."
 - k. "Seller" means the person, firm, or corporation executing this Contract with Buyer and which will furnish the Goods provided for herein.
 - l. "Specifications" includes the drawings, technical requirements, specifications, samples, product descriptions, and all other technical data provided by Buyer to Seller describing the Goods. In the event of a conflict between the drawings and the specifications, the specifications shall govern.
 - m. "Supplemental Terms and Conditions" means the supplemental terms and conditions incorporated by reference within the Purchase Order.
2. **ARTICLE APPLICABILITY.** Seller shall comply with all Articles herein that are applicable to this Contract. Articles that are not applicable due to place, performance, type of effort, or contract are deemed self-deleting, shall not be removed from this document, and will be considered by all parties to be without force and effect.
3. **ASSIGNMENT & CHANGE OF CONTROL**
 - a. Seller shall not and shall cause its affiliates not to, directly, indirectly, voluntarily, or involuntarily, in each case, whether by transfer, operation of law, or otherwise undergo a Change of Control (as defined in subparagraph b below) or otherwise assign this Contract, assign any of its rights or interest in this Contract, delegate any of its obligations under this Contract, or subcontract for all or substantially all of its performance of this Contract (each, a "Transaction"), without Buyer's prior written consent after advance written notice by Seller. No purported Transaction, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any rights or claims that Buyer may have against Seller, whether such obligations, rights or claims, as the case may be, arise before or after the date of any purported Transaction; provided however, that this Article does not limit Seller's ability to purchase standard commercial supplies or raw material in connection with its performance of this Contract.
 - b. For purposes of this Contract, the term "Change in Control" shall mean any of the following, whether in a single transaction or a series of related transactions and whether or not Seller is a party thereto:
 - (1) a sale, conveyance, transfer, distribution, lease, assignment, license, or other disposition of all or substantially all of the assets of Seller;
 - (2) any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates; or
 - (3) any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s).

- c. Notwithstanding the foregoing, payments to Seller may be assigned to a financial institution provided Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of such amounts.
- 4. COMMUNICATION WITH BUYER'S CUSTOMER.** Buyer shall be solely responsible for all liaison and coordination with its customer, any higher tier contractor(s), or the Government, as it affects any applicable prime contract, this Contract, or any related contract. Except as required by law, Seller shall not communicate with the customer, any higher tier contractor(s), or the Government, with respect to the applicable prime contract, this Contract, and/or any related contract without prior written approval from Buyer's Procurement Representative. Seller shall promptly notify Buyer's Procurement Representative of any communications initiated by Buyer's customer, any higher tier contractor(s), or the Government that affects the applicable prime contract, this Contract, and/or any related contract.
- 5. ELECTRONIC CONTRACTING.** The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.
- 6. HEADINGS.** The headings used herein are for reference only and shall not be construed as substantive.
- 7. HOLIDAYS & VACATIONS.** *This Article applies to only time and material contracts.* If work is performed on Buyer's premises, Buyer shall not be obligated to make any payments to Seller for days designated by Buyer as holidays or shutdown periods, except for work specifically authorized in writing by Buyer's Procurement Representative and performed by Seller on such days.
- 8. INDEPENDENT CONTRACTOR.** Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, services performed. In no event shall Seller or its agents, representatives, or employees be deemed to be agents, representatives, or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state, and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes, and workers' compensation insurance.
- 9. LANGUAGE & STANDARDS.** All reports, correspondence, drawings, notices, marking, documentation, and other communications shall be in the English language. In the event of any inconsistency with any translation into another language, the American Standard English meaning of this Contract shall prevail. Unless otherwise provided in writing, all documentation and work shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology. All purchases are in United States Dollars ("USD") unless otherwise set forth on the face of the Purchase Order under the "Order Information" heading. Should Seller's currency require a foreign currency exchange to sell in USD, Seller must notify Buyer in advance of invoice. Buyer may, in its sole discretion, elect to make payment in USD or Seller's primary currency.
- 10. MERGER.** This Contract contains the entire agreement of the parties and integrates, merges, and supersedes all prior offers, discussions, negotiations, and agreements concerning the subject matter hereof and shall not be amended, changed, or modified except in a writing signed by both parties. Only Buyer's Procurement Representative may amend, change, or modify this Contract on behalf of Buyer.
- 11. MOST FAVORED CUSTOMER ASSURANCE.** Seller agrees that the prices for the Goods furnished under this Contract are as low or lower than those charged to Seller's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.
- 12. NONSOLICITATION.** During the term of this Contract, Seller shall not actively recruit, solicit, or otherwise attempt to hire the employees of Buyer who are performing work under this Contract without Buyer's prior written consent. This restriction shall not apply to Buyer's employees who voluntarily seek employment with Seller on their own initiative or in response to employment advertisements in the newspapers, trade publications, or other public commercial media, or as an unsolicited walk-in candidate.
- 13. PUBLICITY.** Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release, or denial or confirmation of same regarding this Contract or the Goods or program to which it pertains without Buyer's prior written approval as to the contents and the manner of presentation and publication of such press release or public statement. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.
- 14. SURVIVAL.** If this Contract expires, is completed, or is terminated, in addition to the Parties' respective indemnity obligations, the following articles/clauses shall survive: "Cost or Pricing Data," "Counterfeit Goods," "Definitions," "Disputes between Buyer

& Seller," "Effect of Disputes under the Prime Contract," "Export Controls," "Independent Contractors," "Insurance," "Seller Records & Audit," "Termination for Convenience," and "Warranty," and Government flowdown provisions that by their nature should survive.

15. RIGHTS & REMEDIES

- a. Any failures, delays, or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.
- b. Except as expressly and affirmatively disclaimed in writing in this Contract, the rights and remedies set forth in this Contract are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory, or threatened breach of this Contract by Seller with respect to its delivery of the Goods to Buyer.
- c. Seller agrees that Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Seller from its obligations to furnish the Goods in strict accordance with the requirements of this Contract.
- d. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.

16. NOTICES. Except as otherwise provided in this Contract, all notices to be furnished by Seller to Buyer shall be in writing and sent to Buyer's Procurement Representative.

II. CONTRACT TERMS

17. FORMATION OF CONTRACT

- a. This Contract, which incorporates by reference these General Terms and Conditions and all other terms and conditions set forth in the proposed Contract, is Buyer's offer to purchase the Goods described in this offer. Acceptance is strictly limited to the terms and conditions included in this offer. Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer, unless specifically agreed to in writing by Buyer's Procurement Representative. Seller's acceptance of this offer shall be evidenced by Seller's commencement of performance, including preparations for such performance, or by acceptance of this offer in writing. However, in the event this Contract is construed to be an acceptance, this acceptance is expressly conditioned on Seller's assent to any additional or different terms.
- b. If this Contract references any Specification or other document that was not provided to Seller by Buyer for whatever reason, then if said Specification or other document is not available through open source or other commercially available means, it is Seller's responsibility to request same from Buyer's Procurement Representative in writing and Buyer shall provide either same or the means to obtain same to Seller within ten (10) business days from receipt of such request. Seller's initiation of work without said Specification or other document shall constitute a waiver of any defense Seller may have to assert it was not bound by said Specification or other document.

18. GOVERNMENT CLAUSES. Government clauses applicable to this Contract from Buyer's contract with its customers, if any, are incorporated elsewhere in this Contract either by attachment, supplement, or by some other means of reference.

19. ORDER OF PRECEDENCE. The parts of this Contract are intended to explain each other and anything contained in one part shall be deemed to be contained in the entire Contract. Seller shall immediately notify Buyer if any discrepancy, difference, or conflict exists between the provisions or the parts of this Contract. Silence of one part relative to any details shown in another part or failure of one part to depict all details covered by another part shall not be considered an inconsistency. In resolving any inconsistency between any parts of this Contract, the order of precedence shall be as follows:

- a. Typed provisions on the face of the Purchase Order;
- b. Any master-type agreement (such as corporate, operating group, or blanket agreements);
- c. Supplemental Terms and Conditions;
- d. These General Terms and Conditions;
- e. Option agreements if made a part of this Contract;
- f. Statement of work if made a part of this Contract;
- g. Specifications that are made a part of this Contract;
- h. Representations and certifications;
- i. Other documents/materials incorporated by reference in this Contract; and
- j. Any other agreements between Buyer and Seller pertaining to this Contract whether incorporated by reference or otherwise, if such are listed on the Purchase Order as being applicable to this Contract.

20. TAXES. Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges, duties, tariffs, and exactions imposed on or measured by this Contract by any government, except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges, duties, tariffs, or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

21. CHANGES

- a. Buyer's Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following:
 - (1) technical requirements and descriptions, specifications, statement of work, drawings, or designs;
 - (2) shipment or packing methods;
 - (3) place of delivery, inspection, or acceptance;
 - (4) reasonable adjustments in quantities or delivery schedules or both;
 - (5) amount of Buyer-furnished property;
 - (6) terms and conditions of this Contract required to meet Buyer's obligations under Government prime contracts or subcontracts;
 - (7) description of services to be performed;
 - (8) the time of performance (e.g., hours of the day, duration, days of the week, etc.); and
 - (9) place of performance.
- b. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this Article, a change pursuant to this Article shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Contract.
- c. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Changes to the delivery schedule will be subject to a schedule adjustment only. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Procurement Representative in writing within fifteen (15) days, and deliver a fully supported proposal to Buyer's Procurement Representative within twenty-five (25) days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- d. Buyer's engineering and technical personnel may from time to time render assistance or give technical advice to, or discuss or affect an exchange of information with the Seller's personnel concerning the Goods. Such actions shall not be deemed to be a change under this Article and shall not be the basis for any equitable adjustment. In the event Seller receives an instruction, order, or advice that Seller deems to be a change from anyone other than Buyer's Procurement Representative, or if Seller otherwise considers that Buyer's or its customer's conduct constitutes a change, Seller shall notify Buyer's Procurement Representative promptly in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Procurement Representative, Seller shall take no action to implement any such change.
- e. Notwithstanding the foregoing provisions of this Article, Buyer may, without notice to Seller or sureties, transfer Goods among Buyer's projects and such transfer shall not be deemed a change for purposes of this Article or a modification to the Contract.
- f. The Seller stipulates that its pricing and schedule take into account the impact the novel coronavirus Covid-19 pandemic may have on its ability to timely perform this Contract. As such, the Parties agree that the novel coronavirus Covid-19 pandemic will not be grounds to change the terms of this Contract, including without limitation, pricing and schedule.
- g. *The following is applicable for only cost reimbursement contracts.* Notwithstanding the foregoing provisions of this Article, the estimated or target cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this Contract indicating the new Contract estimated cost and the new amount allotted to this Contract. Until such modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Reimbursement Limitation" article of this Contract.

III. CONTRACT PERFORMANCE

22. TIME OF PERFORMANCE

- a. Time is and shall remain of the essence in the performance of this Contract and Seller shall strictly adhere to the schedules specified in this Contract. Failure to deliver in accordance with the Contract schedule, if unexcused, shall constitute a material breach of this Contract. In the event of any anticipated or actual delay, including but not limited to delays caused by labor disputes and the events covered by the "Force Majeure" article below, Seller shall: (i) immediately notify Buyer in writing of

the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.

- b. Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver in advance of schedule. In the event of termination/cancellation or change, no claim will be allowed for any manufacture or procurement in advance of normal flow time unless there has been prior written consent from Buyer.
- c. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized in writing by Buyer's Procurement Representative.
- d. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within forty-five (45) days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess.

23. INSPECTION, ACCEPTANCE, & REJECTION

a. Inspection

- (1) At no additional cost to Buyer, all Goods (including raw materials, components, and intermediate assemblies) shall be subject to inspection, surveillance, and testing at reasonable times and places, including Seller's subcontractors' locations. Buyer and Buyer's customer have the right to visit Seller's and Seller's subcontractors' locations during operating hours to inspect, review, and assess progress and performance under this Contract, including, but not limited to, production, schedule, and quality. Any representative of Buyer or Buyer's customer shall be allowed access to all areas used for the performance of the Contract. Any such inspections, surveillance, reviews, and tests shall be performed so as not to unduly delay the work.
- (2) Seller shall provide an inspection system acceptable to Buyer prior to start of fabrication and maintain such inspection system throughout fabrication. This system shall be in effect at the start of each phase of the fabrication of each shipment of supplies. Records of all inspections and tests by Seller shall be kept complete and available to Buyer during the performance of this Contract and until expiration of the warranty period or for such longer period as may be specified elsewhere in this Contract. Seller shall tender to Buyer for acceptance only supplies that have been inspected and/or tested in accordance with the inspection system and have been found by Seller to be in conformity with Contract requirements. Seller shall provide Buyer copies of inspection and test records, not otherwise required to be delivered under this Contract, within ten (10) business days of receiving Buyer's written request for same. Inspection and test records shall, as a minimum, indicate the nature of the observations, number of observations made, and the number and type of deficiencies found. Data included in inspection and test records shall be complete and accurate, and shall be used for trend analysis and to assess corrective action and effectiveness.
- (3) If Buyer or Buyer's customer performs an inspection, surveillance, review, or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
- (4) Buyer's rights to perform inspections, surveillance, and tests and to review procedures, practices, processes, and related documents related to quality assurance and quality control shall extend to the customers of Buyer that are departments, agencies, or instrumentalities of the Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's Procurement Representative, extend such rights to other customers of Buyer and to agencies or instrumentalities of foreign governments. Seller shall cooperate with any such Government-directed or Buyer-directed inspection, surveillance, test, or review without additional charge to Buyer. Nothing in this Contract shall be interpreted to limit Government access to Seller's facilities pursuant to law or regulation.
- (5) The inspections, surveillance, reviews, and tests by Buyer of any Goods or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet any Contract requirements, which may be discovered prior to expiration of the warranty period.

b. Acceptance

- (1) Buyer shall accept the Goods or give Seller notice of rejection within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer.
- (2) Buyer may revoke acceptance of Goods if Goods are non-conforming and if Buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances.
- (3) Acceptance shall not be final with respect to any Goods that contain latent defects.

c. Rejection

- (1) If Seller delivers defective or non-conforming Goods, Buyer may at its option and at Seller's expense: (i) require Seller to promptly reperform, correct, or replace the Goods; (ii) correct the Goods; or (iii) obtain replacement Goods from another

source. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense.

- (2) Goods rejected prior to delivery as not conforming to this Contract shall, at the election of Buyer, and at Seller's expense, be replaced or corrected either by Buyer or by Seller at the location where the supplies are at time of failure.
- (3) Unless Seller corrects or replaces such Goods within the required delivery schedule, Buyer may require delivery of such Goods and equitably reduce the Contract price.
- (4) Seller shall not redeliver corrected or rejected Goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. All repair, replacement, and other correction and redelivery shall be completed as Buyer may reasonably direct.

24. ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE

- a. Performance under this Contract may require that Seller have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, Seller agrees that it shall enter into a written agreement with such third party prior to gaining access to such data or software, which agreement shall address, at a minimum: (1) Seller's access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this Contract, and (2) safeguards to protect such proprietary data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon Buyer or the Government or their respective employees with respect to such data or software. Seller shall furnish a copy of the executed agreement to Buyer. Buyer may unilaterally modify the Contract to list those third parties with which Seller has entered into agreement(s).
- b. Seller agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Seller personnel except as authorized by Buyer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this Contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of Seller; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
- c. The restrictions on use and disclosure of the data and software described above also apply to such information that contains proprietary or other restrictive markings that is received from Buyer or the Government through any means to which Seller has access in the performance of this Contract.
- d. Seller agrees that it will promptly notify Buyer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this Contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
- e. Seller shall include the requirements of this Article, including this paragraph (e) in all subcontracts that may require access to information covered by paragraph (a).
- f. Compliance with this requirement is a material requirement of this Contract.

25. ENTRY ON BUYER OR CUSTOMER PROPERTY.

- a. If this Contract involves work by Seller on the premises of Buyer or Buyer's customer(s), Seller shall comply with and take all precautions required by any safety and security laws and regulations and Buyer internal policies and procedures, as applicable. Buyer's internal policies and procedures are available on the supplier information page on Buyer's website (www.austalusa.com/suppliers) or upon written request to Buyer's Procurement Representative. Seller shall promptly notify Buyer of any such injury or damage. In addition to any other indemnification obligations in this Contract, Seller hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees of Seller, or otherwise, and to all property, caused by, resulting from, or arising out of Seller's negligence or that of its agents or employees when performing work on the premises of Buyer or Buyer's customer(s).
- b. Seller shall at all times enforce strict discipline and good conduct among its employees, and shall not employ in connection with the services covered by this Contract any unqualified or unfit person or anyone not skilled in the work assigned to him or her. Seller also agrees that any employee, subcontractor, or agent provided under this Contract to Buyer will abide by and perform in accordance with the employment policies of Buyer, which address mandatory internal dispute resolution of all covered claims, sexual and other unlawful harassment, drug and alcohol abuse, and equal employment opportunity. Seller shall indemnify and hold Buyer harmless against any liability arising from a violation of such policies or procedures by Seller's employee, subcontractor, or agent. In addition to any other remedies available to Buyer, Buyer may, without notice and an opportunity to cure, expel from its property/worksites, or the property or worksite of Buyer's customer(s), any employee, subcontractor, or agent of Seller found violating any Buyer policy or procedure.
- c. Seller must receive written permission from Buyer before storing any materials upon the premises or constructing any temporary workshop or other apparatus on the premises. Seller agrees to keep the premises free from accumulations of waste material or rubbish caused by its employees, subcontractors, or agents during performance, and at the completion of

performance, Seller shall remove from the premises all rubbish, implements, and surplus materials and leave the premises broom clean, unless otherwise instructed by Buyer or Buyer's customer(s). Seller shall properly store all loose tools and materials.

- d. Prior to Buyer issuing any "No-Escort" badges to Seller's employees performing work in the operating areas of Buyer's premises or facilities for a period of 45 days or more within a 365-day period, or having any access to Buyer computer information systems for any period of time, Seller, shall, at its own expense, obtain a Background Investigation (BI) on Seller's employee.
- e. Seller shall include the substance of this Article, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

26. SELLER PERSONNEL. If Seller provides services to Buyer or if the Purchase Order indicates this Contract provides for payment on a time and material basis, Seller shall assign personnel satisfactory to Buyer. Buyer may, for good cause shown in Buyer's sole determination, require Seller to withdraw the services of any person and require that Seller promptly provide replacements for such person satisfactory to Buyer. Seller shall indemnify and hold harmless Buyer from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages, or expenses arising from Buyer's exercise of its rights hereunder.

27. STANDARDIZATION. All Goods provided by Seller in multiples, on the Purchase Order(s), shall be identical in every way except as may be agreed in writing and in advance by Buyer. Any changes in the configuration of the Goods shall be the subject of a change and the Contract shall be modified accordingly. Seller shall not provide Goods that are not identical without prior written approval of Buyer's Procurement Representative. Seller shall use sound procurement practices in furtherance of this standardization objective and shall include the substance of this Article in its lower-tier subcontracts.

28. CONFIDENTIAL, PROPRIETARY, & TRADE SECRET INFORMATION & MATERIALS

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary, and/or trade secret information of a Party or third party disclosed by a Party; (ii) software provided under this Contract in source code form or identified as subject to this Article; and (iii) tooling identified as subject to this Article: in each case that is obtained, directly or indirectly, from the other in connection with this Contract or Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials excludes information that is, as evidenced by competent records provided by the receiving Party, known to the receiving party, or lawfully in the public domain, in the same form as disclosed hereunder, disclosed to the receiving Party without restriction by a third party having the right to disclose it, or developed by the receiving Party independently without use of or reference to the disclosing Party's Proprietary Information and Materials.
- b. Buyer and Seller shall use Proprietary Information and Materials disclosed by the other Party only to perform and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any and shall not disclose such Proprietary Information and Materials to any third party except as expressly set forth herein. Buyer may also, at any time, use, reformat, copy, or disclose Seller's Proprietary Information and Materials to: (i) fulfill Buyer's obligations under this Contract, other contracts with Seller, and Buyer's contract with its customer, if any; (ii) test, certify, use, sell, or support Goods delivered under this Contract or Buyer's product containing such Goods; (iii) evaluate Seller products and proposals, develop solicitations for Seller products, and develop interfaces or parameters for Buyer products; (iv) perform or obtain data analysis or risk mitigation; (v) obtain data storage, hosting, and other outsourced services; and (vi) ensure regulatory or legal compliance. Any such disclosure by Buyer shall, when appropriate, include a suitable restrictive legend.
- c. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required to perform this Contract, if Seller includes a suitable restrictive legend on such disclosures, and if each such subcontractor has agreed in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- d. A Party may disclose received Proprietary Information and Materials in response to a subpoena or court order, if the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of such requirement to allow the disclosing Party to: (i) seek a protective order or other remedy; (ii) consult with respect to resisting or narrowing the scope of such requirement; or (iii) modify or waive compliance with this section. If such protective order or remedy is not timely obtained, the receiving Party shall use commercially reasonable efforts to disclose only Proprietary Information and Materials legally required to be disclosed and to require confidential treatment of such disclosure.
- e. Upon Buyer's request, and in any event upon the completion or termination of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless Buyer specifically directs otherwise in writing. Seller shall not dispose of (as scrap or otherwise) any Goods, parts or other materials containing, conveying, embodying, or made in accordance with or by reference to any Buyer Proprietary Information and Materials without rendering them unusable. Further, Seller shall not, without a separate license agreement or other written approval from Buyer, make, use, or sell any Goods, parts, or materials containing, conveying, embodying, or made in accordance with or by reference to Proprietary Information and Materials of Buyer except as required to perform this Contract.

- f. The provisions of this Article are effective notwithstanding of any restrictive legends or notices on Proprietary Information and Materials and shall survive the completion or termination of this Contract. Buyer shall have the right to audit Seller's compliance with this Article.
- g. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other Government agency FAR supplement clauses incorporated in this Contract ("Nonconforming Markings"). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

29. INTELLECTUAL PROPERTY

a. Intellectual Property Rights

(1) *Definitions.* For purposes of this Article, the following definitions shall apply:

- A. "Intellectual Property" or ("IP") means inventions, discoveries, and improvements; know-how, works of authorship, technical data, drawings, specifications, process information, reports, and documented information; and computer software.
 - B. "IP Rights" means all worldwide common law and statutory rights to the IP, including but not limited to rights under patents, industrial designs, trade secrets, copyrights, and mask work registrations.
 - C. "Background IP" means all IP and IP Rights owned or controlled by Seller prior to the effective date or outside the scope of this Contract.
 - D. "Foreground IP" means IP and IP Rights conceived, developed, or created by, for, or with Seller either alone or with third parties, in the performance of this Contract, including modifications to any Buyer Specification suggested by Seller.
 - E. "Buyer Specifications" means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP Rights therein, used or intended to be used by Buyer: (i) to establish and define (1) requirements for the Goods and associated processes, service level, system specification, certification, and configuration; and (2) architecture descriptions for the Goods and associated processes, service, and system; and (ii) to procure and certify Goods or similar products and to assure integration of the Goods or similar product with a Buyer product or other systems and equipment included in a Buyer product.
 - F. "Works" means physical manifestations of Intellectual Property created under this Contract.
- (2) Each Party shall retain and exclusively own all rights in its Background IP and in all Foreground IP that it creates. Foreground IP jointly generated by employees of more than one Party shall be jointly owned. Neither Party shall have any obligation to account to the other Party for income arising from use of the jointly owned Foreground IP. Nothing in this Article shall modify or alter any rights that the Government may have in any Goods or Works, including data or software deliverables to the Government.
- (3) *Seller-Owned IP.* Seller shall retain ownership of its Background IP and any Foreground IP not assigned to Buyer (collectively, the "Seller-Owned IP"). Seller hereby grants to Buyer a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right to copy, reproduce, display, publish, prepare derivatives or compilations, distribute, modify, use, sell, offer for sale, and disclose, and authorize others to do any, some, or all of the foregoing, any Good, Works, or other deliverable delivered by Seller under this Contract for the performance of this Contract and any higher tier contract. In addition, if Buyer cancels all or part of this Contract for Seller default in accordance with the "Termination for Default" clause of this Contract, Seller hereby grants Buyer the right to exercise all IP Rights in Seller-Owned IP for the purpose of preventing interruptions to or stoppage of Buyer's production lines or delivery of Buyer's products to its customers.
- (4) *Third Party IP.* If Seller incorporates third-party IP into any deliverable under this Contract, Seller shall obtain for Buyer at least the license rights granted in paragraph (3) above in such third-party IP, at no additional cost to Buyer and hereby grants such rights to Buyer.
- (5) *Nonconforming Markings.* Seller agrees that any IP furnished to Buyer as a required deliverable under this Contract shall be free from confidential, proprietary, or restrictive markings ("Nonconforming Markings") that are either (i) not expressly permitted by applicable FAR or other supplement clauses incorporated into this Contract or (ii) are violative in rights in ownership of any technical data or computer software owned by Buyer. On behalf of itself or its customer, Buyer will notify Seller, in writing, of any Nonconforming Markings and Seller will remove such Nonconforming Markings and resubmit within sixty (60) days after such notification. If Seller fails to remove or correct such Nonconforming Markings within sixty (60) days after such notification, Seller may ignore, or at Seller's expense remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and Seller shall not have any recourse nor shall Buyer incur any liability for any such removal or modification.

b. Intellectual Property Infringement Indemnity and Warranty

- (1) *Indemnity.* Seller shall indemnify, hold harmless, and, at Buyer's election, defend Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents), liabilities, damages, costs, and attorney fees related to the actual or alleged infringement of any intellectual property right or misappropriation or wrongful use of information or documents, and arising out of or related to the use, manufacture, reproduction, sale, or other distribution of Goods by Buyer or its customer. Buyer and/or its customer shall timely notify Seller of any such claim, suit, or action. If Buyer elects for Seller to provide the defense, Seller shall, at its own expense, defend such claim, suit, or action and Buyer shall have the right to participate in the defense at its own expense. Seller shall have no obligation to indemnify Buyer for infringement arising from (i) the compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (ii) use or sale of Goods for other than their intended application when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. The exception in (i) above shall not apply if the infringement arises out of adherence to one or more industry standards or regulatory requirements. For purposes of this Article only, the term Buyer shall include Austal USA, LLC, its parent, and all of its subsidiaries and all officers, agents, and employees of Austal, its parent, or its subsidiaries.
- (2) *Warranty.* Seller warrants that the performance of Seller under this Contract, including the Goods provided by Seller to Buyer, and the sale, use, or incorporation into manufactured Goods of all machines, devices, material, software, and firmware which are not of Buyer's design, composition, or manufacture shall not infringe any valid patent, copyright, trademark, mask works, or other proprietary right of any third party or misappropriate any trade secret of any third party.
- (3) If the manufacture, use, or sale of Goods delivered by Seller under this Contract is likely to be or is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Goods or shall substitute equivalent Goods acceptable to Buyer, at its sole discretion, and extend this indemnification thereto.
- (4) Notwithstanding the foregoing, when this Contract is performed under the authorization and consent of the Government to infringe U.S. patents, Seller's liability for U.S. patent infringement under this Contract shall be coextensive with Buyer's liability.
- (5) No other provision in this Contract, including but not limited to the Indemnity of Seller with Respect to Goods article, shall be construed to limit the liabilities or remedies of the Parties under this article.

30. COUNTERFEIT GOODS

- a. Seller shall not furnish Counterfeit Goods to Buyer. Counterfeit Goods are defined as Goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, relabeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, rework, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.
- b. Seller shall implement appropriate processes to ensure that Goods furnished to Buyer under this Contract are not Counterfeit Goods. Such processes are subject to Buyer review. Seller's processes shall include, but are not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.
- c. If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit Goods with OEM or Buyer-approved Goods that conform to the requirements of this Contract. For confirmed Counterfeit Goods, GIDEP notification shall also be made no later than sixty (60) days after discovery. Seller shall be liable for all costs related to the delivery or replacement of Counterfeit Goods including any testing or validation costs necessitated by the installation of authentic Goods in replacement of Counterfeit Goods.
- d. Seller bears responsibility for procuring authentic Goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

31. DEFEND TRADE SECRETS ACT

Seller shall ensure that the following notice is made available to all of its employees providing services to Buyer and shall provide Buyer (upon Buyer's request) with reasonable evidence of Seller's compliance with this obligation:

"In accordance with the Defend Trade Secrets Act of 2016, an employee or subcontractor of Buyer is immune from and shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a Buyer trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding."

32. PACKING & SHIPPING.

- a. Seller shall pack the Goods and materials to prevent damage and deterioration. Unless otherwise set forth in this Contract, Goods shall be packaged, marked, preserved, packed, and shipped in accordance with the Austal Domestic Routing Guide or the Austal International Routing Guide, as applicable. The guides are available on the Supplier Information page on Buyer's website (www.austalusa.com/suppliers) or upon written request to Buyer. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
- b. Notwithstanding paragraph (a) above, any classified reports, data, and documentation shall be prepared for shipment in accordance with the National Industrial Security Program Operating Manual (NISPOM), 32 CFR Part 117, as updated.

33. LABOR DISPUTES. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice thereof, including all relevant information, to Buyer's Procurement Representative.

34. DELIVERY WINDOW / PROPERTY MANAGEMENT

a. Buyer's Property

- (1) The Purchase Order shall specify the required delivery dates for Goods furnished under this Contract. Buyer may extend this delivery date by notifying Seller in writing. Any such change by Buyer to the delivery date shall be made no less than twenty-five (25) days prior to such date. Goods shall be stored by Seller, without additional cost to Buyer, for a period of up to 120 days after the delivery date unless Seller is otherwise directed to ship the Goods by Buyer's Procurement Representative. If Buyer elects to extend the period of storage beyond the expiration of the 120-day period after the delivery date, Seller shall be entitled to an equitable adjustment as indicated in (5) below.
- (2) Seller shall clearly mark, maintain an inventory or inventory system of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction, or damage of such property while in Seller's possession, custody, or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's prior written consent. Seller shall notify Buyer's Procurement Representative if Buyer's property is lost, damaged, or destroyed. As directed by Buyer, upon completion or termination of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.
- (3) Seller shall issue a notice to Buyer five (5) calendar days prior to placing Goods in storage. Such notice shall include all pertinent information needed to identify the Goods, including but not limited to the Prime Contract number if it appears on the Purchase Order, Buyer's Purchase Order number, Buyer's part number, description of the Goods, maintenance procedures for the Goods for the storage period, and certificate of insurance covering the stored Goods.
- (4) Seller shall perform all necessary maintenance during storage, shall conduct a monthly quality assurance inspection and maintenance check of all stored Goods and shall provide copies of inspection reports to Buyer.
- (5) Buyer may require Seller to store Goods furnished pursuant to a Contract addendum. Any additional storage, handling, maintenance, and local transportation costs incurred by Seller to store Goods at Buyer's Procurement Representative's written direction via Contract addendum shall be at a onetime non-recurring charge plus a monthly rate as agreed to in writing by Seller and Buyer. Storage charges will start when Goods are placed in storage, but not before the delivery date as may have been amended prior to the Contract addendum necessitating the storage. Storage charges will end when the Goods are removed from storage.

- b. Government-Owned Property. To the extent that Seller, including any subcontractor thereof, uses Government property, either furnished to or acquired by Seller under this Contract, in the performance of this Contract, Seller shall manage such property in accordance with FAR 52.245-1 (Jan 2017), unless some other date version or equivalent FAR clause is provided elsewhere in this Contract.

35. SELLER NOTICE OF DISCREPANCIES

- a. Seller shall immediately notify Buyer in writing when discrepancies in Seller's process, materials, or approved inspection/quality control system are discovered or suspected which may materially affect the Goods delivered or to be delivered under this Contract, including the quantity and specific identity of any impacted Goods.
- b. Whenever Seller receives, either before or after shipment of Goods under this Contract, notification that any of the Goods, including any component, part, or material thereof, is the subject of a Government-Industry Data Exchange Program ("GIDEP") alert, Seller shall promptly furnish such information to Buyer.

36. STOP WORK ORDER

- a. Buyer's Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed ninety (90) days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" clause of this Contract; (iii) terminate this Contract in accordance with the "Termination for Default" clause of this Contract if grounds for default exist; or (iv) extend the stop work period.
- b. Seller shall resume work whenever a suspension is canceled or the period of the order or any extension thereof expires. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled or expires.

37. QUALITY CONTROL SYSTEM

- a. Seller agrees to establish and maintain a quality control system to an industry recognized quality standard for the Goods purchased under this Contract. Seller shall ensure its employees are aware of their contribution to product/service compliance and product safety. 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.
- b. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.
- c. Seller agrees to notify Buyer's Procurement Representative of product that does not meet the requirements of this Contract that cannot be reworked to compliance. Written approval will be required by Buyer's Procurement Representative prior to Seller's shipment of nonconforming material to Buyer. Additionally, Seller shall notify Buyer's Procurement Representative if Seller discovers that previously delivered Goods do not meet the requirements of this Contract.
- d. Seller agrees to notify Buyer's 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.

38. INVOICES & PAYMENT

- a. Firm Fixed Price Contracts
 - (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a firm fixed price basis.
 - (2) *Invoices*
 - A. All invoices shall be submitted directly to Buyer, marked attention: Accounts Payable.
 - B. Invoices shall be in such form and shall bear such certifications as may be required or approved by Buyer.
 - C. Not more than one purchase order shall appear on each invoice.
 - D. Invoices shall show the amount of any federal excise taxes or state or local sales, use, occupational, gross receipts, or other direct tax included therein.
 - E. All invoices shall contain the Seller's invoice number, Purchase Order number, line item number, release number, and Buyer's name.
 - F. Invoices incorrectly or incompletely executed may be returned for correction or completion and, if so, payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice.
 - G. Buyer may take any offered discount.
 - H. Except for amounts invoiced under the "Termination for Convenience" or "Termination for Default" clauses, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.
 - (3) *Payment*
 - A. Unless otherwise provided in writing by Buyer's Procurement Representative, payment will be due sixty (60) days after acceptance of work and/or delivery of Goods and after receipt of a proper invoice unless otherwise specified in this Contract. Adjustments in Seller's invoices due to shortages, late delivery, rejections, or other failure to comply with the requirements of this Contract may be made by Buyer before payment. Cash discounts may be taken from

date of acceptance of delivered items, or date of receipt of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. If progress payments are agreed upon, Buyer shall have legal title to all materials that have been in whole or in part financed with progress payments from Buyer. However, Seller shall have full responsibility for loss or change to materials until delivery to Buyer.

- B. Payments shall be processed on the next payment system run following the computed payment due date.
- C. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

b. Cost-Reimbursement Contracts

- (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a cost-reimbursement basis.
- (2) All incurred travel costs shall be in accordance with Buyer's Supplier Expense Report for Allowable Cost Reimbursement, which is available on the Supplier Information page on Buyer's website (www.austalusa.com/suppliers) or upon written request to Buyer, and FAR 31.205-46.

(3) *Invoices*

- A. All invoices shall be submitted directly to Buyer, marked attention: Accounts Payable.
- B. Invoices shall be in such form and shall bear such certifications as may be required or approved by Buyer.
- C. Not more than one purchase order shall appear on each invoice.
- D. Invoices shall show the amount of any federal excise taxes or state or local sales, use occupational, gross receipts, or other direct tax included therein.
- E. All invoices shall contain the Seller's invoice number, Purchase Order number, line item number, release number, and Buyer's name.
- F. Invoices incorrectly or incompletely executed may be returned for correction or completion and, if so, payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice.
- G. Buyer may take any offered discount.
- H. Except for amounts invoiced under the "Termination for Convenience" or "Termination for Default" clauses, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.

(4) *Payment*

- A. Except as provided in this Subparagraph b, payment shall be made in accordance with the following clauses of the FAR, which are incorporated by reference, and in accordance with Buyer's payment process set forth above in subparagraph a(3). In each of the following clauses the term "Contractor" means Seller, the term "Contracting Officer" means Buyer's Procurement Representative, the term "Government" means Buyer, and the "Disputes Clause" means the "Disputes between Buyer & Seller" article of this Contract.
 - i. FAR 52.216-7 (Aug 2018), "Allowable Cost and Payment," the terms "cognizant Federal Agency official" and "appropriate Government representative" maintain their original meaning except that for purposes of final indirect cost rate determinations in paragraph (d) where those terms shall mean Buyer. Subparagraphs (a)(2), (b)(4), and (d)(4) and paragraph (f) are deleted. In subparagraph (h)(2)(ii)(B), the term "6 years" is deleted and replaced with the term "5 years, 9 months." The blank in paragraph (a)(3) is filled-in with the word "30th," unless otherwise specified in the Contract. All payments are made in accordance with Buyer's payment process set forth above in subparagraph a(3).
 - ii. FAR 52.216-8 (Jun 2011), "Fixed Fee," if this is a cost-plus-fixed fee contract.
 - iii. FAR 52.216-10 (Jun 2011), "Incentive Fee," if this is a cost-plus-incentive fee contract. The values to fill-in the blanks in subparagraph (e)(1) are set forth elsewhere in this Contract.
- B. Payments shall be processed on the next payment system run following the computed payment due date.
- C. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

c. Time & Material Contracts

- (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a time and material basis.
- (2) *Invoices*

- A. All invoices shall be submitted directly to Buyer, marked attention: Accounts Payable.
- B. Invoices shall be in such form and shall bear such certifications as may be required or approved by Buyer.
- C. Not more than one purchase order shall appear on each invoice.
- D. Invoices shall show the amount of any federal excise taxes or state or local sales, use occupational, gross receipts, or other direct tax included therein.
- E. All invoices shall contain the Seller's invoice number, Purchase Order number, line item number, release number, and Buyer's name.

- F. Invoices incorrectly or incompletely executed may be returned for correction or completion and, if so, payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice.
- G. Buyer may take any offered discount.
- H. Except for amounts invoiced under the “Termination for Convenience” or “Termination for Default” clauses, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.
- I. Material shall be furnished by Seller except as specifically provided in this Contract. Material purchased to support this Contract shall be billed at actual costs without overhead, general, and administrative costs, cost of money and profit, as evidenced by paid invoices. Material withdrawn from Seller’s stores shall be charged at cost determined in accordance with generally accepted accounting practices. Unless otherwise noted, handling charges are included in the labor rates established in this Contract. Buyer shall be credited with all cash or trade discounts, rebates, allowances (whether or not taken), and the value of any resulting scrap.

(3) *Payment*

- A. Except as provided in this Subparagraph c, payment shall be made in accordance with FAR 52.216-7 (Aug 2018) “Allowable Cost and Payment”, which is incorporated by reference, and in accordance with Buyer’s payment process set forth above in subparagraph a(3). The term “Contractor” means Seller, the term “Contracting Officer” means Buyer’s Procurement Representative, the term “Government” means Buyer, and the “Disputes Clause” means the “Disputes between Buyer & Seller” Article of this Contract. For purposes of final indirect cost rate determinations in paragraph (d), the terms “cognizant Federal Agency official” and “appropriate Government representative” maintain their original meaning. Subparagraphs (a)(2), (b)(4) and (d)(4) and paragraph (f) are deleted. In subparagraph (h)(2)(ii)(B), the term “6 years” is deleted and replaced with the term “5 years, 9 months.” The blank in paragraph (a)(3) is filled-in with the word “30th” unless otherwise specified in the Contract. All payments are made in accordance with Buyer’s payment process set forth above in subparagraph a(3).
- B. Payment shall be deemed to have been made on the date Buyer’s check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

39. OVERTIME. *This Article only applies to time and material contracts.* Overtime shall mean those hours worked in excess of forty (40) hours during Seller’s standard work week. All such overtime must have prior written approval of Buyer.

40. REIMBURSEMENT LIMITATION

- a. *This Article is only applicable to cost-reimbursement contracts.*
- b. If this Contract is fully funded, FAR 52.232-20 (Apr 1984), “Limitation of Cost,” is incorporated by reference. The term “Schedule” means this Contract, the term “Contractor” means Seller, the term “Government” means Buyer, and the term “Contracting Officer” means Buyer’s Procurement Representative. The word “exclusive” in the first sentence of paragraph (a) is revised to “inclusive.” Paragraph (d)(1) is revised to read: “(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the Contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract.”
- c. If this Contract is incrementally funded, FAR 52.232-22 (Apr 1984), “Limitation of Funds,” is incorporated by reference. The term “Schedule” means this Contract, the term “Contractor” means Seller, the term “Government” means Buyer, and the term “Contracting Officer” means Buyer’s Procurement Representative. The word “exclusive” in the second sentence of paragraph (b) is revised to “inclusive.” Subparagraph (f)(1) is revised to read: “(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this Contract; and . . .”

41. SELLER FINANCE REVIEW

- a. Seller shall provide financial data as specified below, on a quarterly basis, or as requested, to Buyer for credit and financial condition reviews. If Seller itself is publicly traded (not a subsidiary of a publicly traded company) and is required to file reports with the Securities and Exchange Commission (“SEC”), Buyer shall obtain Seller financial data from information made available to the general public via 10-K and 10-Q reporting requirements. In the event that Seller does not submit financial statements to the SEC or is no longer required to do so during the term of this Contract, Seller shall provide financial data on a quarterly basis to Buyer. Such financial data shall include, but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within seventy-two (72) hours of any written request by Buyer. All such information shall be protected in accordance with the “Confidential, Proprietary, and Trade Secret Information and Materials” article of this Contract.
- b. This provision shall not apply if Seller is a nonprofit education or research institution associated with state or provincial universities, an agency of the Government or of state governments, an entity that is at least fifty percent (50%) directly owned by Buyer, or an individual providing Goods when the individual is the sole employee (inclusive of subcontractors) of the Seller.

42. SELLER RECORDS & AUDIT

- a. **Record Retention.** Seller shall retain all financial records and documents pertaining to the Goods for a period of no less than six (6) years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records.
- b. **Protection.** Seller records disclosed pursuant to this Article shall be protected in accordance with the “Confidential, Proprietary, and Trade Secret Information and Materials” article of this Contract.
- c. **Firm Fixed Price Contracts & Cost-Reimbursement Contracts**
 - (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a firm fixed price or cost-reimbursement basis.
 - (2) *Audit of Proposals and Pricing*
 - A. **Certified Cost or Pricing Data.** To the extent this Contract, or any modification thereof, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4 and is not otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall provide to Buyer for this Contract or modification to this Contract, as the case may be, the certified cost or pricing data required by Table 15-2 of FAR 15.408 or in a form provided by the Buyer. Buyer shall have the right to examine, reproduce, and audit such Seller records.
 - B. **Other than Cost or Pricing Data.** To the extent this Contract, or any modification thereof, does not exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4 or is otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall support and demonstrate to Buyer the reasonableness of any Seller proposals or pricing for this Contract or modification to this Contract, as the case may be, in accordance with FAR 15.402 and FAR 15.404-3(c)(2). Seller shall provide to Buyer such information other than cost or pricing data and any other information necessary to satisfy obligations Buyer may have to its customer demonstrating price reasonableness for proposals and pricing. Buyer shall have the right to examine, reproduce, and audit such Seller records.
 - (3) *Audit of Claims and Invoices.* Seller shall provide to Buyer all information supporting Seller’s claims pertaining to incurred costs, including, but not limited to, Seller’s invoices for cost reimbursement, claims arising out of a termination or partial termination of this Contract or out of some other dispute, and Seller’s proposals under the “Changes” article of this Contract that involve unique claims (e.g., obsolescence costs), which must be verified by audit. Buyer shall have the right to examine, reproduce, and audit all such Seller records.
- d. **Time & Material Contracts**
 - (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a time and material basis.
 - (2) *Audit of Claims and Invoices*
 - A. The labor hours shall be supported by a complete and accurate timekeeping system acceptable to Buyer and shall include evidence of actual payment. Buyer shall have the right to assign representatives to Seller’s plant for the purpose of verifying the number and type of direct hours being incurred and making such audit and check of Seller’s activities as may be reasonably required. Material charges shall be supported by paid invoices or storeroom requisitions. When Buyer-furnished property is used, a copy of Buyer’s shipper shall be kept in Seller’s files for auditing purposes. Such records shall be made available to Buyer, upon request, for examination, reproduction and audit from the date of this Contract until three years after final payment hereunder. As a result of any audit performed by Buyer, payments previously made to Seller shall be subject to adjustment for over payment or under payment, respectively. Seller shall submit its final invoice promptly after completion of work. Upon approval of Seller’s final invoice and substantiating documentation and upon compliance by Seller with all terms of this Contract, Buyer shall promptly pay any balance due to Seller.
 - B. Upon request, Seller shall make available to Buyer data relative to payroll policies and procedures, including collective bargaining agreements with respect to wage payments for straight time, overtime, holidays, etc.
 - (3) *Audit of Proposals and Pricing*
 - A. **Certified Cost or Pricing Data.** To the extent this Contract, or any modification thereof, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4 and is not otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall provide to Buyer for this Contract or modification to this Contract, as the case may be, the certified cost or pricing data required by Table 15-2 of FAR 15.408 or in a form provided by the Buyer. Buyer shall have the right to examine, reproduce, and audit such Seller records.
 - B. **Other than Cost or Pricing Data.** To the extent this Contract, or any modification thereof, does not exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4 or is otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall support and demonstrate to Buyer the reasonableness of any Seller proposals or pricing for this Contract or modification to this Contract, as the case

may be, in accordance with FAR 15.402 and FAR 15.404-3(c)(2). Seller shall provide to Buyer such information other than cost or pricing data and any other information necessary to satisfy obligations Buyer may have to its customer demonstrating price reasonableness for proposals and pricing. Buyer shall have the right to examine, reproduce, and audit such Seller records.

43. EFFECT OF DISPUTES UNDER THE PRIME CONTRACT

- a. Any decision adverse to Seller by the Government under the Prime Contract relating to any portion of the Prime Contract that has been incorporated into this Contract and that binds Buyer shall likewise bind Seller, provided:
 - (1) Buyer promptly notifies Seller of the decision; and
 - (2) if requested by Seller, Buyer appeals the decision in accordance with the disputes provisions of the Prime Contract and takes whatever further action is required under that Article and is requested by Seller.
- b. Any other decision of the Government under the Prime Contract concerning a provision of the Prime Contract that has been incorporated into this Contract that is binding on Buyer and cannot be appealed under the disputes procedure noted in (a) above shall also bind Seller. A final judgment in any such proceeding shall be conclusive upon Seller.
- c. In any claim, suit, or appeal prosecuted by Buyer under this Article, Seller shall be permitted to participate fully for the purpose of protecting its interest and, if requested by Buyer, shall assume the burden of carrying forward any claim, suit, or appeal initiated by Buyer at Seller's request. All costs and expenses incurred by Seller and Buyer in prosecuting any claim, suit, or appeal or proceeding of any kind initiated at Seller's request shall be at Seller's expense and Seller shall promptly reimburse Buyer of any costs it incurs in complying with Seller's requests under this Article.
- d. Pending any final decision, pursuant to this Article, Seller shall proceed diligently with performance of this Contract.
- e. To the extent that the Government withholds from payments due Buyer a portion of the Prime Contract price because of delays or deficiencies in Buyer's performance of the Prime Contract that may be attributable to delays or deficiencies in Seller's performance of the Contract, Buyer shall have the right to withhold or deduct from payments due Seller an equivalent portion or amount. Nothing in this subparagraph (e) is intended to preclude or curtail Seller's right to request, in good faith, Buyer to appeal or otherwise seek review of the Government's decision to withhold or deduct a portion of the Prime Contract price due to delays or deficiencies for which Seller may be responsible, and refusal of Buyer to appeal or otherwise seek review will be subject to resolution pursuant to the "Disputes Between Buyer & Seller" article of this Contract.

44. RETURNS. Subject to the requirements of this Contract, Buyer may return unused goods and materials deemed accepted under the Inspection, Acceptance, & Rejection article above for any reason within twelve (12) months of the date Buyer receives Seller's invoice for such goods or materials. In the event Buyer paid Seller for such goods or materials, Seller shall refund Buyer 100% of price paid by Buyer for such goods or materials. Seller reserves the right to charge Buyer no more than a five percent (5%) restocking fee for any goods or materials returned to Seller within eight (8) months of the date Buyer receives Seller's invoice. Seller reserves the right to charge Buyer no more than a ten percent (10%) restocking fee for any goods or materials returned to Seller after such 8-month period and prior to expiration of the 12-month return period. Acceptance of returns of customized goods or materials is in the sole discretion of Seller. Shipping and transportation costs to return such goods and materials shall be to Buyer's account.

45. WARRANTY

- a. Seller shall extend to Buyer the full coverage of any standard commercial warranty normally offered in a similar commercial sale, provided that such warranty is available at no additional cost to Buyer. Seller shall provide a copy of the standard commercial warranty with the Good(s).
- b. The following provisions apply only in the event Seller does not have a standard commercial warranty, Seller's standard commercial warranty does not apply to the Contract, or Seller fails to provide a copy of the standard commercial warranty with the Good(s):
 - (1) Seller warrants that:
 - A. The Goods furnished under this Contract shall conform to all Specifications and requirements of this Contract and shall be free from defects in materials and workmanship;
 - B. The Goods shall be merchantable and fit for the intended purpose of Buyer and/or Buyer's customer;
 - C. To the extent the Goods are not manufactured pursuant to detailed designs and Specifications furnished by Buyer, the Goods shall be free from design and specification defects;
 - D. The Goods shall be free from liens or encumbrances;
 - E. Buyer will receive free, good, and clear title to all deliverables developed under this Contract;
 - F. The Goods shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy, or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and

- G. The Goods shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed, or otherwise made available without the consent of Buyer; (b) may require distribution, copying, or modification of any software free of charge; (c) may require disclosure, license, or redistribution of source code; (d) may require the grant of rights in excess of those granted by Buyer in its standard end user license agreements; (e) may require that others have the right to modify the code; or (f) may impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules.
- (2) The warranty period shall begin upon the final acceptance of the Good(s) and shall extend for a period of no less than 90 days. The warranty shall survive inspection, test, and payment for the Goods so long as such inspection, test, and payment are completed within the warranty period.
- (3) To the extent Seller's delivery of Goods includes services, Seller further warrants that the services shall be performed by employees or agents of Seller who are competent and are experienced, skilled, and trained in their profession, craft, or trade and in accordance with industry standards.
- (4) In addition to the foregoing warranties, any applicable statement of work may contain additional warranties that specifically apply to such statement of work. If the Goods or any part of the Goods is a commercial item, then Seller shall transfer the manufacturer's commercial warranty to the Buyer and Buyer's customer.
- (5) Buyer shall give Seller notice after discovery of a defect or nonconformance in the Goods. In the event of any defect or nonconformance in the Goods, Buyer may, at its option and at Seller's expense: (i) require prompt correction or replacement of the Goods, or (ii) return the Goods for credit or refund. Return to Seller of defective or nonconforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to the requirements of this Contract in the same manner and to the same extent as Goods originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework, or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the contract price. If Seller fails or refuses to correct or reperform, Buyer may, by contract or otherwise, correct or replace with similar services and charge to Seller the cost occasioned to Buyer thereby, or make an equitable adjustment in the contract price.
- (6) The following warranty is applicable only if the Goods are rental property:
- A. Seller warrants that:
- i. The rental property shall be in first-class condition, in good working order, in conformance with the Contract, and equipped with all required safety devices as to operate properly and render safe, efficient, economical and continuous service; and
- ii. It has good title to the rental property and the right to enter into the Contract.
- B. If the rental property fails to operate properly or fails to render safe, efficient, economical and continuous service at any time during the term of the Contract, Buyer shall so notify Seller, and immediately upon such notification Seller shall, at Seller's sole expense, either: (a) retrieve the rental property and replace it with properly operating and satisfactory equivalent rental property; or (b) make or pay for such repairs or maintenance as may be necessary to restore the rental property to properly operating and satisfactory condition. Buyer shall not be responsible for payment of the Contract price for any period during which the rental property is out of service owing to its failure to operate properly or fails to render safe, efficient, economical, and continuous service, unless such failure is directly caused by Buyer's negligence or intentional misconduct in the use or operation of the rental property. Buyer shall not be required under any circumstances to surrender the rental property or pay any portion of the Contract price to any person or entity other than Seller pursuant to any lien, levy, attachment, writ or execution, court order, judicial sale, or any other legal process.
- C. Buyer shall not be liable for the loss of or damage to the rental property unless directly caused by Buyer's negligence or intentional misconduct in the care, operation or use of the rental property during the term of the Contract. Seller shall not have, or be entitled to make, any claim for any such loss or damage unless Seller gives Buyer: (a) written notice of any nature, extent, and amount of such loss or damage within 48 hours after Seller retrieves the rental property; and (b) the opportunity to inspect the rental property within seven (7) days after retrieval. In no event shall Buyer be liable for loss of rent or for any other consequential damages.
- c. Acceptance of Seller's standard commercial warranty does not waive Buyer's rights under the "Inspection, Acceptance, & Rejection" article, nor does it limit Buyer's rights with regard to other terms and conditions of this Contract. In the event of a conflict between Seller's standard commercial warranty and the terms and conditions of this Contract, the terms and conditions of this Contract shall take precedence over Seller's standard commercial warranty.

any anticipated or planned component obsolescence data to assist in the life cycle management of the shipboard equipment. Technology will be considered obsolete if any one of the following criteria exists:

- a. Product is no longer in production or expected to be phased out of production by the original equipment manufacturer within two (2) years following delivery of the Prime Contract product by Buyer to its customer.
- b. Product is no longer commercially supported.
- c. Any component without supplier support for seven (7) years following delivery of the Prime Contract product by Buyer to its customer.
- d. Product whose projected maintenance costs exceed replacement costs with current technology.

When authorized by Buyer, Seller shall provide any software changes, technical upgrades, or version updates produced after initial software introduction, and shall ensure those changes are installed in the applicable system/equipment before delivery. These changes shall also be reflected in Seller furnished applicable documentation or manuals.

IV. LAWS & REGULATIONS

47. BUSINESS CONDUCT

- a. Compliance with Laws. Seller and the Goods shall comply with all applicable statutes and Government rules, regulations, and orders including without limitation, (i) all applicable laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et seq.), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall not, either directly or indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- b. Gratuities. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or shall offer or give, any gratuities to Buyer’s employees, agents, or representatives for the purpose of doing or forbearing to do any act, or for showing any favor or disfavor to any person, with respect to the award of this Contract or any work performed under the Contract. Buyer shall have the right to deduct from the Contract price the full amount of any such gift made by Seller in breach of this warranty and may terminate this Contract for default for breach of this warranty by Seller.
- c. Environmental Health and Safety. Seller acknowledges and accepts full and sole responsibility to maintain an environmental, health, and safety management system (“EMS”) appropriate for its business throughout the performance of this Contract. Buyer expects that Seller’s EMS shall promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver Goods that contain asbestos mineral fibers.
- d. Work Transfer. Seller shall not and shall ensure its supply chain shall not, initiate a movement or transfer of the location for the work to be performed under this Contract to another facility without Buyer’s prior written approval.
- e. Buyer Policies. Seller agrees that Buyer’s internal policies, procedures, and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.
- f. Subcontracting. Seller agrees that no subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- g. Ethics and Compliance Program. Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. Buyer strongly encourages Seller to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under the Contract that they may report any concerns of misconduct by Buyer or any of its employees or agents by sending an e-mail to Buyer at suppliercompliance@austalusa.com. Seller shall convey the substance of this clause to its suppliers.
- h. Seller and Sub-Tier Supplier Information. In addition to requirements set forth elsewhere in this Contract, Seller shall, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under this Contract. Such information may include but is not limited to Seller’s subcontract management plans, Buyer programs supported, Seller assessment of sub-tier supplier’s capability including financial health and performance issues.

48. GOVERNING LAW. This Contract and any disputes, claims, or causes of action (whether in contract, tort, or statute) that may be based upon, arise out of, or relate to this Contract, or the validity, negotiation, interpretation, execution, or performance of this Contract (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Contract or as an inducement to enter into this Contract), shall be governed by, and enforced in accordance with, the laws of the State of Alabama, including its statutes of limitations, without regard to the conflict of law rules thereof, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR

supplements, (ii) contract provisions that have been flowed down from a contract with the Government, and (iii) the “Changes” article and “Termination for Convenience” clause, shall be construed and interpreted according to the federal common law of Government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Government. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. This Contract shall be construed as having been drafted and prepared by both Parties.

49. EXPORT CONTROLS

- a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the Government and the government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, the International Traffic in Arms Regulations (“ITAR”) of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, “Export Control Laws”).
- b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Export Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller’s sub-tier suppliers or Seller’s non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- c. Subject to applicable Export Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
- d. Seller shall not export, re-export, transfer, disclose or otherwise provide or make accessible Buyer’s technical data and/or hardware controlled by Export Control Laws (“Export Controlled Information”) to any persons, or entities not authorized to receive or have access to the data, services, and/or hardware, including third country/dual national employees, lower-tier subcontractors, and sub-licensees, or modify or divert such Export Controlled Information to any military application unless Seller receives advance, written authorization from Buyer and verification of any required export authorization is in place. Seller shall not provide a defense service as defined by the Export Control Laws using any or all of Buyer’s technical data and/or hardware. Upon Buyer’s request, Seller shall demonstrate to Buyer’s reasonable satisfaction, Seller’s and Seller’s lower-tier subcontractors’ compliance with this clause and all Export Control Laws. To the extent the Goods provided under this Contract include packing, labeling, processing, and/or handling exports for Buyer, Seller shall maintain an auditable process that assures accurate packing, labeling, processing, and handling of such exports. Seller shall also promptly notify Buyer if it becomes aware of any failure by Seller or Seller’s lower-tier subcontractors to comply with this clause and shall cooperate with Buyer in any investigation of such alleged failure to comply.
- e. Seller hereby represents that neither Seller nor any parent, subsidiary, affiliate, employee, sublicensee, or lower tier supplier of Seller (i) are located within an ITAR §126.1 listed country, (ii) nor included on any of the restricted party lists maintained by the Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”), the List of Statutorily Debarred Parties maintained by the U.S. State Department’s Directorate of Defense Trade Controls or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, “Restricted Party Lists”). Seller further represents that it shall immediately notify the Buyer Procurement Representative in writing if Seller’s or its parents, subsidiaries, affiliates, employees, or sublicensees or lower tier suppliers status changes with respect to any of the foregoing.
- f. 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 control compliance program in accordance with all applicable Export Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller’s compliance with applicable Export Control Laws shall be made available to Buyer upon request.
- g. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller’s export privileges are otherwise denied, suspended, or revoked in whole or in part by any Governmental entity.
- h. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Export Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller’s performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- i. Upon completion of performance of this Contract, Seller and its lower-tier subcontractors shall as directed by Buyer, return or destroy all export controlled technical data, technology, hardware, and/or other items. In the event Buyer does not give such direction within 60 Days of completion of performance of this Contract, then in such instance Seller and its lower-tier subcontractors shall destroy all export controlled technical data, technology, hardware, and/or other items, unless such items

are required by Seller and/or its lower-tier subcontractors in the performance of a subsequent contract between Buyer and Seller. Seller shall provide a certificate of destruction for all destroyed items.

- j. Seller shall include paragraphs a. through i. and this paragraph j. of this Article or equivalent provisions in lower-tier subcontracts for the delivery of items that will be included in or delivered as Goods to Buyer.
- k. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expense, including attorney fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Article.

50. DISPUTES BETWEEN BUYER & SELLER

- a. All claims and disputes, including any and all claims or disputes (1) that in any way arise out of or relate to this Contract, the negotiation or execution thereof, its performance, or the breach or enforcement thereof, (2) that in any way concern the conduct of any Party in connection with this Contract or the relationship or duties of the Parties contemplated under this Contract, and (3) concerning the validity or scope of the terms and conditions of this Contract (including, but not limited to, this Article) (hereinafter for purposes of this Article "Claims"), that cannot be resolved by the Parties through negotiations within thirty (30) calendar days or such longer period of time as may be mutual agreed in a written document that is signed by a duly authorized representative of each Party shall be resolved by the state or federal courts. The Parties hereby (i) submit to the sole and exclusive jurisdiction of the State Courts of Alabama and the Federal Courts of the United States of America sitting in Mobile County in the State of Alabama for the purpose of any action or proceeding arising out of or relating to this Contract, and (ii) agree that all Claims in respect of any such action or proceeding shall be heard and determined in such courts. Each Party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Contract brought in any such court, and hereby further irrevocably waives any Claim that any such suit, action, or proceeding brought in such court has been in an inconvenient forum. The Parties waive trial by jury with respect to any proceeding involving this Contract.
- b. Any Claim by Seller must be submitted to Buyer in writing no later than ninety (90) days after the events which give rise to the Claim. Claims in excess of \$100,000 shall contain the following certification signed by an officer or principal of Seller:
"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which both I and my employer believe Buyer is liable; and that I am duly authorized to certify the claim on behalf of my employer."
- c. Failure to submit a Claim within such time frame and with such certification if the Claim exceeds \$100,000 shall constitute a waiver of such Claim and Seller shall be forever barred from asserting said claim against Buyer in any court, provided, however, that Buyer may recognize an otherwise time-barred claim when the circumstances, in Buyer's sole discretion, warrant it doing so.
- d. Pending final resolution of any Claim, Seller shall proceed diligently with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

V. LIABILITY & INDEMNIFICATION

51. COST OR PRICING DATA

- a. If Seller, its subcontractor, or prospective subcontractor fails to submit accurate, complete, and current cost or pricing data, and, as a result of that failure, the Government reduces the price of Buyer's Prime Contract, Buyer may recover from Seller an amount equal to the price reduction of the Prime Contract.
- b. If, as a result of Seller's or its subcontractor's foregoing conduct, Buyer is subjected to any liability or if the Government imposes a penalty on or charges Buyer interest, then Seller shall indemnify and hold Buyer and its officers, directors, agents, and customers harmless to the fullest extent permitted by law against any loss, damage, or expense resulting from such failure.
- c. For the purposes of paragraphs a and b of this Article, if Buyer is a higher-tier subcontractor, "Government" means the higher-tier contractor.
- d. Seller shall not raise as defenses the matters listed in FAR 52.215-10(c)(1) (Aug 2011) or FAR 52.215-11(d)(1) (Jun 2020).

- 52. **FORCE MAJEURE.** Neither Party shall be liable for any excess costs or other damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Party alleging an event of Force Majeure. Force Majeure causes are: (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) freight embargoes, and (h) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Party. Force Majeure events shall be deemed to have ended at such time as the event in question no longer reasonably obstructs or delays such Party's performance. The Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic. If the failure to perform is

caused by the default of Seller's subcontractor at any tier and if such default arises out of causes beyond the control of both Seller and such subcontractor, and without the fault or negligence of either, Seller shall not be liable to Buyer for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. The Party alleging an event of Force Majeure shall notify the other Party in writing within five (5) days after the beginning of any such cause(s) and shall set forth the following in such notice: (i) the reasons for the nonperformance and the actions being taken to overcome or minimize the nonperformance; (ii) a written recovery schedule; (iii) impact to cost, performance, and/or materials, and (iv) any other relevant information. In all cases, the Party alleging an event of Force Majeure shall use reasonable efforts to avoid or minimize all such failures, including exercising alternative plans or obtaining the Goods from other sources.

53. INDEMNITY OF SELLER WITH RESPECT TO GOODS. In consideration of the award of this Contract and/or the payment of the first one hundred dollars (\$100.00) in compensation, Seller shall, to the fullest extent permitted by law, indemnify, hold harmless, and, at Buyer's election, defend Buyer, its parent, member, and subsidiaries, and their directors, managers, officers, employees, and agents (individually and collectively referred to as an "Indemnified Party"), against all allegations, complaints, liability, lawsuits, arbitrations, fines, administrative actions, claims, demands, liens, judgments, awards, and damages of any kind and nature whatsoever (all of which hereinafter are referred to as "claims") for property damage, personal injury, or death (including, without limitation, injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation, and counsel fees related thereto or incident to establishing the right to indemnification, arising out of, resulting from, or in any way related to this Contract, the performance or nonperformance thereof by Seller, any subcontractor thereof, or other third parties within the control or acting at the direction of Seller, or any of their respective employees (collectively for the purposes of this Article, the "Seller Parties"), including without limitation, the provision of Goods, personnel, facilities, equipment, support, supervision, or review. Seller shall not be obligated to defend or indemnify the Indemnified Party with respect to the willful misconduct of the Indemnified Party or any claims that do not in any way relate to this Contract. This defense and indemnity obligation shall require Seller to defend and indemnify an Indemnified Party even if a claim against the Indemnified Party arises out of injuries or damages to a Seller Party. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this Article.

54. INSURANCE. Seller shall comply with Buyer's insurance requirements, which are available on the supplier information page on Buyer's website (www.austalusa.com/suppliers) or upon written request to Buyer.

55. TERMINATION

a. Firm Fixed Price Contracts / Time & Material Contracts

- (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a firm fixed price basis or time and material basis.
- (2) *Termination for Convenience.* Buyer may terminate all or part of this Contract, effective as of the date specified by Buyer, in accordance with the provisions of FAR 52.249-2 (April 2012) "Termination for Convenience of the Government (Fixed Price)," which provisions, except for subparagraphs (d) and (j), are incorporated herein by reference. The term "Government" means "Buyer," the term "Contracting Officer" means "Buyer's Procurement Representative," the term "Contractor" means "Seller," and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place. The time for requesting an equitable adjustment under subparagraph I (lower case letter "L") is reduced to forty-five (45) days. Settlements and payments under this Article may be subject to approval by the Contracting Officer.
- (3) *Termination for Default*
 - A. Buyer may, by written notice to Seller, terminate all or part of this Contract: (i) if Seller fails to assure timely performance; (ii) if Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (iii) if Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Procurement Representative; or (iv) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of its creditors.
 - B. Seller shall continue all work not canceled. If Buyer terminates all or part of this Contract, Seller shall be liable for Buyer's excess re-procurement costs.
 - C. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the

terminated portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest.

- D. Buyer shall pay the Contract price for completed Goods accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" clause of this Contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- E. In addition to its other remedies, Buyer may, with respect to work terminated as permitted in this Article, proceed with the completion of the Goods at such plant or plants, including that of Seller, as may be designated by Buyer. If the Goods are to be completed at Seller's plant, Buyer may use all tools, machinery, facilities, and equipment of Seller determined by Buyer to be necessary for that purpose. In addition, Buyer shall have the right to remove its materials from Seller's facility and use Seller's tools and equipment to do so. If the cost to Buyer of the Goods therefore so procured or completed (after adjusting such cost to exclude the effect of changes in Specifications made subsequent to the date of termination) exceeds the price fixed for such Goods on account of changes in the Specifications made prior to the date of termination), Seller or its surety, if any, shall be liable to Buyer for such excess.
- F. In the event of termination, all of Seller's subcontracts may, at the option and in the sole discretion of Buyer, be fully assignable to Buyer. Buyer has the right, but not the obligation, to accept any such assignment.
- G. If, after termination, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" clause of this Contract.

b. Cost-Reimbursement Contracts

- (1) This subparagraph applies only if the Purchase Order indicates this Contract provides for payment on a cost-reimbursement basis.
- (2) FAR 52.249-6 (May 2004), "Termination (Cost Reimbursement)," is incorporated by reference, except that the term "Government" means "Buyer," the term "Contracting Officer" means "Buyer's Procurement Representative," the phrase "1 year" is deleted each place it occurs and replaced by the term "six months," paragraphs (e) and (j) are deleted, and
 - A. Subparagraph (a)(2) is deleted in its entirety and replaced with the following:

"(2) Buyer may cancel the whole or any part of this Contract in the event of:

 - (i) Seller's default ("default" includes failure to make progress in the work so as to endanger performance) of any or all of the requirements of this Contract and within ten (10) days after receipt of notice from Buyer specifying the failure does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Procurement Representative; or
 - (ii) in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of creditors."
 - B. Paragraph (b) is deleted in its entirety and replaced with the following:

"(b) Buyer's Procurement Representative shall terminate the Contract in accordance with paragraph (a) of this 52.249-6 clause by delivering to Seller a Notice of Termination specifying whether termination or cancellation is pursuant to subparagraphs (a)(1) or (a)(2), the extent of the termination, and the effective date. If, after termination under subparagraph (a)(2)(i), it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the "Force Majeure" article, the rights and obligations of the Parties shall be the same as if the termination was for the convenience of Buyer."
 - C. Subparagraph (h)(4) is deleted in its entirety and replaced with the following:

"(4) A portion of the fee payable under the Contract, determined as follows:

 - (i) If the Contract is terminated under subparagraph (a)(1) of this 52.249-6 clause, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the Contract is cancelled under subparagraph (a)(2) of this 52.249-6 clause, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the Contract."