

**Exelis Inc. – STANDARD COMMERCIAL TERMS AND CONDITIONS**

*For Commercial Subcontracts and Purchase Orders Not Issued In Connection With a U.S. Government Contract*

**1. PURCHASE OF PRODUCTS.** Exelis Inc., together with its subsidiaries and affiliates (collectively “Buyer”) has the absolute right to purchase the Items or Services from manufacturers or suppliers other than Seller. Except when issued to carry out a written contract between the parties, this order constitutes the entire agreement of sale and purchase of the goods and services identified herein, and is expressly limited to and made conditional upon the acceptance of all the terms and conditions. Any additional or different terms and conditions contained in any prior quotation or that may be contained in any acknowledgment of this purchase order shall be deemed objected to by Buyer without further notice of objection and shall be of no effect nor under any circumstances be binding upon Buyer. Seller shall be deemed to have assented to all terms and conditions of this purchase order if any of the goods are shipped or services provided to Buyer.

**2. PERFORMANCE STANDARDS.**

- (a) The Items and Services Seller delivers must correspond to Items and/or Services ordered in the applicable Order. Seller shall at all time employ persons to perform the tasks who are fully experienced and properly qualified to perform the same.
- (b) Buyer shall have the right to reject any Services or Items or lots of Items which it determines are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require their correction or replacement. Rejected Services or Items shall be removed or if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to promptly replace, correct, or remove such Services or Items or lots of Items which are required to be removed, Buyer may:
- (1) replace or correct such Services or Items and charge to Seller the cost occasioned Buyer thereby; or
  - (2) pay for such Services or Items at a reduced price which is equitable under the circumstances; or
  - (3) cancel this Order; or
  - (4) exercise any other applicable rights or remedies.
- Seller will bear all risk of loss with respect to all non-conforming Services or Items and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming Services or Items. Buyer’s payment for any non-conforming Items or Services will not constitute acceptance by Buyer, limit or impair Buyer’s right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Items or Services.
- (c) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified herein or later agreed upon by the Parties in writing and after final inspection of those Items or Services by Buyer and Buyer’s customer. Final acceptance shall be contingent upon agreement by Buyer and Buyer’s customer that the Items or Services conform to the requirements of this Order. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in this Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit or affect the warranty or indemnity granted by Seller hereunder.

**3. ORDERING AND PRICING.**

- (a) Buyer will submit purchase orders (“Orders”) to Seller and Seller will confirm the Order (the “Order Confirmation”) within 48 hours of receipt. The Order Confirmation will include:
- (i) the Item and/or Service price;
  - (ii) the quantity of Items and/or Services; and
  - (iii) any other costs or charges.
- If Seller fails to provide a proper Order Confirmation, Buyer shall only be responsible for payment of the amount set forth in the Order. Seller will be allowed no additional charges unless specified in the Order.
- (b) Seller will notify Buyer in writing within 30 calendar days of the occurrence of any alleged payment disputes. Buyer may deduct any Seller monetary obligations from any amounts owed to Seller by Buyer, including for overpayments, and pay only the net sum due, if any.

**4. INVOICING AND PAYMENT.**

- (a) Buyer shall pay Seller, upon the submission of proper invoices or vouchers, the prices stipulated in the Order for Items delivered and accepted or Services rendered and accepted, less any deductions provided in this Order.
- (b) The invoice payment period will start on the later of the date:
- (1) 45 calendar days from Buyer’s receipt of an acceptable invoice; or
  - (2) the Items are delivered and accepted or Services rendered and accepted.
- (c) If the invoice receipt by Buyer is delinquent, or if a pricing discrepancy results when comparing the invoice amount to Buyer’s Order amount or Items or Services received, processing of the invoice may be delayed. Buyer shall consider Seller invoices paid on the date the check is postmarked and mailed to Seller.

**5. DELIVERY & PLACE OF SERVICE:**

- (a) Shipments made pursuant to this Order must be shipped as specified and to the delivery location specified in the Purchase Order. If Seller does not use Buyer’s specified carrier(s) and additional freight are incurred as a result, such additional freight cost shall be Seller’s responsibility. Moreover, Seller agrees that Buyer reserves the right to refuse shipments made in advance of the schedule set forth in the Order. Seller may also refuse deliveries made after the scheduled delivery date set forth in the Order, and in such case, will not be liable to Seller for any Items or Services not accepted.
- (b) Seller shall provide Services at the place(s) specified by Buyer in the Order.

**6. WARRANTY.**

- (a) Seller warrants that all the Items and Services furnished hereunder shall:
- (1) be merchantable;
  - (2) be fit for the use intended by Buyer, whether expressed or reasonably implied, and/or which is stated on any packaging, labeling, or advertising;
  - (3) be free from defects in material, workmanship, design and fabrication;
  - (4) be free from security interests, liens or encumbrances and of good title; and
  - (5) be performed with that degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar Items or Services.
- (b) Neither approval by Buyer of Seller’s design or material used nor Buyer’s inspection of same shall relieve Seller from any obligations under the warranties set forth in this Article.
- (c) The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and the users of these Service(s) and Item(s) and shall not be deemed to be the exclusive rights of Buyer but shall be in addition to other rights of Buyer under law, equity, and the terms of this Order.

**7. NOTICES:** All notices permitted or required under this Agreement shall be in writing and shall be by personal delivery, a nationally recognized overnight carrier, facsimile transmission or certified or registered mail, return receipt requested.

**8. TITLE AND RISK OF LOSS:** Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items to be supplied hereunder until final acceptance by Buyer. Buyer shall have equitable title to all Items for which partial or progress payments have been furnished to Seller.

**9. APPLICABLE LAW AND DISPUTES:** Any disputes under this Order that are not disposed of by mutual agreement of the Parties may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of this Order as directed by Buyer. Any dispute over any question of fact or law arising under this Order shall be governed by the laws of the State of Indiana. Seller consents to personal jurisdiction in Indiana and any litigation under this Order, if commenced by Seller, must be brought exclusively in a Court of competent jurisdiction in the State of Indiana, without regard to conflicts of law principles. The parties hereby mutually agree to waive their respective rights to trial by jury. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

**10. TERM AND TERMINATION:**

- (a) The term of this Agreement shall commence as of the date set forth in this order and shall automatically terminate five (5) years from such date.
- (b) Buyer may at any time terminate this order in whole or in part for Convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the purchase order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expense
- (c) Buyer may terminate this order for default in whole or in part by written notice to Seller if:
- (1) Seller becomes insolvent or makes a general assignment for the benefit of creditors; or
  - (2) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated within ten (10) days after it is filed; or
  - (3) Seller fails to make delivery of the Items or to perform the Services within the time specified in this Order; or
  - (4) Seller fails to perform any of the other obligations of this Order, or fails to make progress, so as to endanger performance of this Order, in accordance with its terms; or
  - (5) Seller’s financial condition endangers completion of performance, (provided with respect to (4) and (5) Seller fails to remedy any such condition within seven (7) days from the date of receipt of a notice from Buyer concerning the existence of the condition); or
  - (6) it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer’s customer or Buyer; or
  - (7) Control of Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of Seller’s assets used for the production of the Items; (b) the sale or exchange of a controlling interest in the shares of Seller; or (c) the execution of a voting or other change of control. Seller will provide Buyer with written notice of change of control within ten (10) days after the change of control has become effective. Buyer will have sixty (60) days from the date that Buyer receives written notice from Seller within which to notify Seller of its decision to terminate this Order. The effective date of the termination will be no sooner than thirty (30) days after the effective date of the written notice of termination according to the terms of notice; or
  - (8) Seller is sanctioned, suspended, or debarred by the Government; or
  - (9) it is found that Seller has a potential, actual or apparent personal or organizational conflict of interest related to or arising out of its performance of this Order and Buyer determines that such conflict(s) cannot be adequately avoided or mitigated.
- (d) Upon any termination or expiration this Agreement or if Buyer discontinues the purchase of Items or Services, each party will continue to be obligated to make all payments due that arose under this Agreement prior to such termination or expiration. Upon a termination of this Agreement
- (1) Buyer may, in its sole discretion:
    - (i) return Non-conforming Items to Seller at Seller’s expense;

- (ii) sell all other Items under the terms and conditions of this Agreement until such Item is depleted; and
- (2) Buyer shall have no obligation to Seller for any of Seller's inventory of finished goods, packaging materials or raw materials of any kind, nor for any amounts expended by Seller for preparation of Services.

**11. INDEMNITY AGAINST CLAIMS/LIMITATION OF LIABILITY:** Seller shall, without limitation, indemnify, save, and hold harmless Buyer and its customer(s) and their respective officers, directors, employees and agents from and against every liability, claim of liability, allegation, judgment, cost, expense, attorneys fees, cause of action, loss or damages whatsoever, including, without limitation, (i) any and all claims (including claims under Workers' Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the Services or other Items supplied by Seller pursuant to this Order, including, without limitation, latent defects in such Services or other Items, except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Buyer; (ii) all claims (including resulting costs, expenses and liability) by the employees of Seller or any of its subcontractors; and (iii) any and all allegations, actions, proceedings, claims, or awards for any infringement, misappropriation, or wrongful use suit or action, including, without limitation, any proceeding under 28 U.S.C. § 1498, alleging that manufacture, use or sale infringes any patent, trademark, copyright, trade secret, mask work right or other proprietary or intellectual property right in connection with any Items, software or data furnished hereunder, whether such are provided alone or in combination with other Items, software or processes. In the event Buyer should bring action to enforce the indemnification provisions of this Article and prevail in such action, Seller agrees that Buyer shall be entitled to be awarded its reasonable attorney's fees and costs.

**12. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** Seller agrees to comply with all applicable national, state, provincial and local laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal government authority.

**13. CONFIDENTIAL RELATIONSHIP:** Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication, including without limitation by news releases, articles, brochures, advertisements, or speeches, any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Items and/or Services required by this Order, or quote the opinion of any employees of Buyer. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to be returned to Buyer upon Buyer's written request.

**14. INSURANCE.** Seller shall maintain at its expense commercial/ comprehensive general liability insurance (including bodily injury, property damage, product liability, contractual liability and completed operations coverage) from a carrier having an A.M. Best rating of A- or better, in a minimum amount of three million dollars (\$2,000,000), per occurrence and annual aggregate, except in the case of cleaning/chemical supplies where the amount shall be five million dollars (\$5,000,000), per occurrence and annual aggregate. Any such policy shall designate Buyer (including all subsidiaries and affiliates) as a primary additional insured. A certificate of insurance for such coverage shall be delivered to Buyer upon execution of this Agreement and annually thereafter. The certificate shall specify that Buyer shall be given at least thirty (30) days' prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage.

**15. GENERAL RELATIONSHIP:** Seller's relationship to Buyer in the performance of this Order is that of an Independent Contractor. Neither Seller nor any of the persons utilized by Seller to furnish materials or perform work or Services under this Order are employees of Buyer. Seller shall, at its own expense, comply with all applicable laws and regulations and assume all liabilities and obligations imposed by such laws and regulations with respect to this Order. Seller agrees that neither it nor its personnel are employees of Buyer, or provided to any benefits provided or rights guaranteed by Buyer, or by operation of law, to Buyer's respective employees.

**16. RIGHTS IN DATA AND INVENTIONS:**

- (a) All specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

- (b) Unless otherwise expressly agreed in writing to the contrary all specifications, information, data, drawings, software and other items which are: supplied to Seller by Buyer, or obtained or developed by Seller in the performance of this Order or paid for by Buyer, shall be proprietary to Buyer, shall be used only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Items supplied by Buyer or obtained by Seller in performance of this Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Order.
- (c) Any invention or intellectual property first made or conceived by Seller in the performance of this Order or which is derived from or based on information supplied by Buyer shall be considered to be the property of Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer's interest in and title thereto, including, without limitation, assigning any and all right, title and interest Seller has in any subject property to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to deliver Items or Services also executes and assigns any and all rights, titles, and interest in any such intellectual property to Buyer. Any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire."

**17. TAXES:** Unless otherwise notified by Buyer in writing, the price of this Order includes and Seller shall be responsible for the payment of any Federal, State, and Local taxes, duties, tariffs, transportation taxes, or other similar taxes or fees which are required to be imposed upon the Items or Services ordered hereunder by Buyer or Buyer's customer, unless Seller obtains any applicable exemptions.

**18. MODIFICATION OF ORDER:** This Order contains all the agreements of the Parties with respect thereto and no course of dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in this Order may not be added to, modified, superseded or otherwise altered except by a written instrument signed by the parties.

**19. NO WAIVER OF CONDITIONS:** Buyer's failure to insist upon or enforce strict compliance by Seller with respect to any aspect of this Order shall not be deemed a waiver or relinquishment to any extent of any of Buyer's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall remain in full force and effect. Waiver of a right under this Order shall not constitute a waiver of any other right, waiver or default under this Order.

**20. SEVERABILITY:** If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

**21. ARTICLE HEADINGS:** The headings and subheadings of Articles contained herein are used for convenience and ease of reference and do not limit the scope or intent of the Article.

**22. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign, delegate or otherwise transfer (by merger, asset sale, contract, operation of law or otherwise) its rights or obligations under and this Agreement or grant a security interest in or pledge as collateral any interest in this Agreement, without Buyer's prior written consent.

**23. MERGER.** This Agreement constitutes the entire agreement with respect to the purchase and sale of Items and/or Services between Buyer and Seller and all other subject matter covered herein. This Agreement shall not be modified, changed or amended except in a writing signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**24. SURVIVABILITY:** If this Order expires, is completed, or is terminated Seller shall not be relieved of those obligations contained in this Order for the following provisions: Ordering and Pricing, Article 3; Warranty, Article 6; Applicable Law and Disputes, Article 9; Indemnity Against Claims/Limitation of Liability, Article 11; Compliance with Federal, State and Local Laws, Article 12; Confidential Relationship, Article 13; Insurance, Article 14; and General Relationship, Article 15.