

# GENERAL COMMERCIAL TERMS & CONDITIONS

GENCOM (CONTRACT NOT 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 GENCOM 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. "Goods" means supplies and/or services provided by Seller.
  - g. "Government" means the Government of the United States of America.
  - h. "Purchase Order" means any written instrument from Buyer for Goods that is designated a "Purchase Order."
  - i. "Seller" means the person, firm, or corporation executing this Contract with Buyer and which will furnish the Goods provided for herein.
  - j. "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.
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 Seller may assign its right to monies due or to become due under this Contract, and 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. 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.
- 5. HEADINGS.** The headings used herein are for reference only and shall not be construed as substantive.
- 6. 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.
- 7. 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. Seller shall defend, indemnify, and hold Buyer harmless from any and all administrative actions, allegations, claims, complaints, demands, fines, judgments, lawsuits, and liabilities resulting from any failure to so comply.
- 8. 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.
- 9. 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. This Contract shall be construed as having been drafted and prepared by both Parties.
- 10. 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.
- 11. NON-SOLICITATION.** 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.
- 12. 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.
- 13. SURVIVAL.** If this Contract expires, is completed, or is terminated, in addition to the Parties' respective indemnity obligations and as otherwise stated in this Contract, the following articles/clauses shall survive: "Counterfeit Goods," "Definitions," "Disputes between Buyer & Seller," "Export Controls," "Independent Contractors," "Insurance," "Termination for Convenience," and "Warranty."
- 14. RIGHTS & REMEDIES**
- 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.
  - 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.

**15. NOTICES.** All notices and other communications given or made pursuant to this Contract shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Communications to Buyer shall be sent to Buyer's Procurement Representative. Communications to Seller shall be sent to Seller's representative indicated on the face of the Purchase Order.

**16. THIRD PARTY RIGHTS.** This Contract is intended solely for the benefit of Buyer and Seller and is not intended for the use or benefit of any other party. Nothing contained in this Contract is intended to make any person or entity that is not a signatory to this Contract a third party beneficiary of any right created by this Contract.

## **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 commencement of 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. RESERVED**

**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. These General Terms and Conditions;
- d. Option agreements if made a part of this Contract;
- e. Statement of work if made a part of this Contract;
- f. Specifications that are made a part of this Contract;
- g. Representations and certifications;
- h. Other documents/materials incorporated by reference in this Contract; and
- i. 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) description of services to be performed;
  - (7) the time of performance (e.g., hours of the day, duration, days of the week, etc.); and
  - (8) 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 price adjustment only. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, within 15 days after Seller's receipt of such direction, Seller must assert any claim for adjustment to Buyer's Procurement Representative in writing and deliver therewith a fully supported proposal detailing the estimated impact of the change on the price, the performance or delivery schedule, and the performance capabilities of any Goods. 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 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 failure of the parties to agree to any adjustment shall be a dispute under the Disputes between Buyer and Seller 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. SCOPE OF PERFORMANCE.** Seller shall supply and furnish at the location where the work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary for the complete and satisfactory performance of this Contract, except such items that Buyer, in this Contract, specifically agrees to supply or furnish to or for the use of Seller. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary for Seller to properly complete its contractual obligations, shall be deemed within the scope of this Contract and shall be provided by Seller.

**24. STANDARD OF PERFORMANCE**

- a. Seller agrees to use reasonable diligence, exercise its best judgment, and use the care and skill ordinarily used by reputable similar persons or entities in providing the same or similar services under similar circumstances. Seller is on notice that Buyer is relying on the care, skill, diligence and judgment exercised by Seller in performing its contractual obligations.
- b. Seller shall be responsible to the Buyer for acts and omissions of the Seller's employees, subcontractors, and their agents and employees, and other persons, including engineers and other design professionals, performing any portion of the Seller's obligations under this Contract.
- c. If Seller subcontracts any portion of the Contract Work, Seller shall provide Buyer with the name and address of such subcontractor prior to executing such subcontract. Buyer may decline the usage of such subcontractor based on Buyer's independent evaluation of subcontractor's qualifications.

**25. 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 has 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 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 shipset 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 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) 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 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.

**26. 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 its 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 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 any third party 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 or company 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.

**27. ENTRY ON BUYER PROPERTY.**

- a. If this Contract involves work by Seller on the premises of Buyer, Seller shall comply with and take all precautions required by any environmental, health, and safety ("EHS") 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](http://www.austalusa.com/suppliers)) or upon written request to Buyer's Procurement Representative. 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 Buyer's premises.
- 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 employees, subcontractors, or agents.
- c. Seller must receive written permission from Buyer before storing any materials upon Buyer's premises or constructing any temporary workshop or other apparatus on the premises. Seller agrees to keep Buyer's 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. 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 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. Environmental, Health, & Safety. Seller and its contractors, subcontractors, vendors, agents, suppliers, team members, and invitees, and their employees (collectively “Subcontractors”) shall comply with Buyer’s EHS policies, procedures, and best practices (collectively “EHS Policies”) and with all federal, state, and local laws and regulations while on Buyer’s premises. Under no circumstances will the compliance obligations with the EHS policies alone be considered complete satisfaction of the requirements of this clause. Seller must notify Buyer immediately of any accident/incident involving Seller or its Subcontractors in connection with or during the performance of this Contract.
  - (1) Seller shall be solely responsible for the safe conduct of Seller and its Subcontractors. Seller shall complete the following prior to commencement of work on Buyer’s premises by Seller or its Subcontractors:
    - A. Provide to Buyer the name, cell number, email, and title or position of the person who has the authority to correct any violations of the EHS Policies or violations of federal, state, or local laws or regulations by Seller or its Subcontractors during the performance of this Contract (“Seller’s EHS Representative”);
    - B. Provide to Buyer a copy of Seller’s written EHS policies and its permits and certifications applicable to the operations being performed on Buyer’s premises; and
    - C. Provide to Buyer a list of all chemicals that Seller anticipates using on Buyer’s premises and copies of all Safety Data Sheets for such chemicals.
  - (2) If Seller or its Subcontractors perform work on Buyer’s premises, Seller shall immediately notify Buyer, in writing, upon receiving notice of any inspection from any federal, state, or local agency, board, commission, or other political subdivision or agency contractor of their work area on Buyer’s premises. In the event of such an inspection, Seller shall permit Buyer’s personnel to be present at any opening conference, the inspection, and any closing conference, and Seller shall provide Buyer with copies of all correspondence, including citations, relating to such inspection.
  - (3) All Seller furnished coatings and thinners shall comply with federal, state, and local VOC regulations, including but not limited to, 40 CFR Part 63. A list of all coatings and thinners to be used by Seller or its Subcontractors in the performance of its work shall be provided to Buyer by Seller prior to the commencement of Seller’s or its Subcontractor’s work. Thinners are to be used for cleaning coatings application equipment only. The applicable Air Quality Data Sheets (air emissions as applied) for all coatings and thinners identified on the list provided to Buyer by Seller shall be provided to Buyer by Seller prior to the commencement of Seller’s or its Subcontractor’s work. All coatings and thinners must be approved by Buyer prior to their use on Buyer’s premises.
  - (4) Seller shall provide a written report identifying the quantities and types of coatings and thinners used by Seller or its Subcontractors on Buyer’s premises. Seller must provide the report to Buyer within five (5) calendar days after completion of the work for projects that begin and complete in the same month or prior to the 8th day of each month (report covers the previous month) for projects that are performed in multiple months.
  - (5) If, in Buyer’s sole opinion, Seller fails to comply with this Environmental, Health, & Safety Clause, Buyer, may without prejudice to any other legal or contractual rights of Buyer, issue an order stopping all or part of Seller’s performance. Seller shall have no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- f. Security. Seller and its Subcontractors shall comply with Buyer’s security policies and procedures regarding personnel administration, vehicle and vessel operations, and general security practices. Additionally,
  - (1) From time to time, Buyer may have a vessel owned by the United State government at Buyer’s premises. In such instances, only U.S. citizens are eligible for access to such vessels, work sites, and adjacent areas where work on the vessel’s equipment is being performed, unless Seller first obtains Buyer’s prior written approval for non-U.S. citizens. Seller warrants that unless such prior approval is obtained, only U.S. citizens shall have access to Buyer’s premises.
  - (2) All persons, property, vessels, and vehicles entering or leaving Buyer’s premises are subject to search.
  - (3) Prior to entry, Seller shall coordinate with Buyer to gain access. Seller shall provide information reasonably required by Buyer to ensure proper identification of all personnel entering Buyer’s premises, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual, or other status.
- g. Treatment at Buyer’s Medical Facilities. Buyer shall have no obligation to furnish medical treatment to Seller’s or Seller’s subcontractor’s employees while such employees may be working in Buyer’s facilities. In the event Buyer’s Medical Department furnishes medical treatment to any such employee, Seller shall defend, indemnify, and hold harmless Buyer, its affiliated companies, and the directors, officers, and employees of each of them, from and against any and all claims, demands, or causes of action by Seller’s employees or their representatives, heirs, or assigns for costs or damages (including without limitation punitive damages and reasonable attorney fees) arising out of or in connection with medical treatment furnished by Buyer, including claims based upon the negligence of Buyer.

- h. Use of Buyer's Equipment. Seller shall not use, or permit any third party to use, any of Buyer's equipment, tools, devices, apparatus or property (collectively "Buyer's Equipment") without Buyer's express, written consent. If Buyer so consents,
  - (1) Seller shall ensure that only qualified, properly trained persons use Buyer's Equipment and that such persons obey all of Buyer's applicable use procedures and requirements and all applicable federal, state and local laws and regulations;
  - (2) Buyer's Equipment is provided "as-is," with no warranty, express or implied, as to its merchantability, fitness for any particular purpose, current condition, or prior maintenance history; and
  - (3) Seller is responsible for all risk of loss of or damage to Buyer's Equipment used by Seller.
- i. Removal. In addition to any other remedies available to Buyer, Buyer may, without notice and an opportunity to cure, expel from Buyer's premises any employee, subcontractor, or agent of Seller found by Buyer, in its sole opinion and discretion, to have violated any Buyer policy or procedure or any applicable federal, state, or local laws or regulations. Seller shall remove such person(s) immediately upon Buyer's request.
- j. Seller shall include the substance of this Article, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

**28. 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.

**29. 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.

**30. CONFIDENTIALITY OF DATA AND INFORMATION.** Information furnished by Buyer and identified by Buyer as "AUSTAL Proprietary/Trade Secret Information" or otherwise identified as subject to restricted access or dissemination ("Confidential Information") shall be and remain property of Buyer; shall not be duplicated, used or disclosed to third parties except for the purpose and to the extent necessary for the performance of this Contract, and shall not be used in any manner to Buyer's detriment, including without limitation, to reverse engineer, disassemble, decompile, or design around Buyer's proprietary services, products, and/or confidential intellectual property. Upon completion of this Contract, all Confidential Information furnished by Buyer shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Seller shall take all reasonable precautions to maintain in confidence all such information, including the imposition upon any person, firm, or corporation to whom disclosure of such information is made in the course of performance under this Contract of conditions relating to the confidential treatment thereof to the same effect as those imposed upon Seller herein. The obligations imposed upon Seller herein shall not apply to such information that was previously known to Seller and Seller can show through written records that it possessed such knowledge prior to receipt of the information from Buyer, is lawfully obtained or obtainable by Seller from another source, is or comes into the public domain other than as a result of breach of this Confidentiality of Data and Information paragraph.

**31. PROPERTY RIGHTS IN THE GOODS.** All data and materials prepared or developed by Seller in connection with the performance of the Goods shall be Buyer's exclusive property and shall be provided to Buyer upon completion of performance of this Contract, upon termination of this Contract, or upon Buyer's earlier request.

**32. INTELLECTUAL PROPERTY**

- a. Intellectual Property Rights
  - (1) Seller agrees that Buyer shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights, and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller shall maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the Article entitled "Confidentiality of Data and Information." Seller shall assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this Article.

- (2) To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Goods and not owned by Buyer pursuant to this or a previous agreement with Seller, Seller grants to Buyer an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.
  - (3) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by Seller and furnished to Buyer pursuant to this Contract shall become the sole property of Buyer. Nothing in this paragraph (3) assigns ownership of Seller's intellectual property included on such medium to Buyer.
- b. Intellectual Property Infringement Indemnity and Warranty
- (1) *Indemnity.* Seller shall indemnify, hold harmless, and, at Buyer's election, defend Buyer 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. Buyer 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 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.
- c. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the Parties under this article.

### 33. 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.

#### **34. RESERVED**

#### **35. 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](http://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.

**36. 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.

**37. SELLER NOTICE OF DISCREPANCIES.** 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.

#### **38. 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.

#### **39. 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.
- 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.

#### 40. INVOICES & PAYMENT

##### a. Invoices

- (1) All invoices shall be submitted directly to Buyer, marked attention: Accounts Payable.
- (2) Invoices shall be in such form and shall bear such certifications as may be required or approved by Buyer.
- (3) Not more than one purchase order shall appear on each invoice.
- (4) 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.
- (5) All invoices shall contain a description of the Goods, comprehensive itemized prices, prior payments received, discounts, and the Seller's invoice number, Purchase Order number, line item number, release number, and Buyer's name.
- (6) 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.
- (7) Buyer may take any offered discount.
- (8) 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.

##### b. Payment

- (1) Buyer shall pay Seller no later than 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.
- (2) Payments shall be processed on the next payment system run following the computed payment due date.
- (3) 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.

#### 41. LIENS

- a. Seller waives any and all rights to any lien against Buyer by Seller or Seller's subcontractors.
- b. Buyer shall have the right to withhold any payment until Seller shall furnish, as requested, current written releases and waivers of all rights to claim or file liens, properly executed by Seller and its subcontractors. Seller's acceptance of full payment of the Contract price shall constitute satisfaction in full and release of all claims or demands of Seller and its subcontractors against Buyer arising out of or connected with this Contract. If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay such claims and deduct such payments from funds due Seller hereunder or, if such claims be disputed, withhold sufficient funds to pay such claims until they are resolved. Seller shall immediately discharge or cause to be discharged any lien or charge of any kind which at any time is filed against the property of Buyer with respect to, or arising from, Seller's performance or non-performance. If any such lien or charge is not immediately discharged, Buyer may discharge or cause to be discharged such lien or charge at the expense of Seller.

#### 42. 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 or Seller's standard commercial warranty does not apply to the Contract:
  - (1) Seller expressly 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;
    - 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 and 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 ninety (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) Seller hereby assigns to Buyer all warranties provided by the manufacturers of all Goods and their components.
- (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.
- (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.

- 43. DIMINISHING MANUFACTURING SOURCES & MATERIAL SHORTAGES.** For Seller supplied components, systems, and equipment containing electronic components susceptible to upgrades, revisions, or changes as deemed by Buyer, Seller shall provide Buyer 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 Goods to Buyer.

- b. Product is no longer commercially supported.
- c. 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.

#### **44. 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 through negotiations by each Party's senior executive with responsibility for this Contract within thirty (30) calendar days or such longer period of time as may be mutually 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.

## **IV. LAWS & REGULATIONS**

#### **45. BUSINESS CONDUCT**

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. Subcontracting. Seller agrees that no subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- f. 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](mailto:suppliercompliance@austalusa.com). Seller shall convey the substance of this clause to its suppliers.

- g. **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.

#### **46. APPLICABLE LAWS**

- a. **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.
- b. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- c. **Chemicals.** Seller represents that each chemical substance constituting or contained in the Goods is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States the Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017).
- d. **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. )
- e. **Safety Data Sheets.** Seller shall make available to Buyer all Safety Data Sheets for any material provided to Buyer, or brought or delivered to Buyer's premises in the performance of this Contract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

#### **47. EXPORT CONTROLS**

- a. Seller 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 Seller in any investigation of such failure to comply.

- e. Seller hereby represents that neither Seller nor any parent, subsidiary, affiliate, employee, or 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 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 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.
- h. 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 or other items. Seller shall provide a certificate of destruction for all destroyed items.
- i. Seller shall include paragraphs a. through h. and this paragraph i. of this clause or equivalent provisions in lower-tier subcontracts for the delivery of items that will be included in or delivered as Goods to Buyer.
- j. 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 clause.

## **V. LIABILITY & INDEMNIFICATION**

### **48. FURNISHED PROPERTY**

- a. Buyer may, by written authorization, provide to Seller property owned by Buyer ("Furnished Property"). Furnished Property shall be used only for the performance of this Contract.
- b. Title to Furnished Property shall remain in Buyer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- c. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve
- d. Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.
- e. At Buyer's request and/or upon completion of this Contract, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

**49. 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. Examples of 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) strikes, (h) freight embargoes, and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Party. 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.

**50. 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.

**51. 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](http://www.austalusa.com/suppliers)) or upon written request to Buyer.

**52. TERMINATION**

a. Termination for Convenience

- (1) Buyer reserves the right to terminate this Contract, or any part hereof, for its convenience. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, Seller shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (2) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (3) If this Contract is terminated only in part, Seller shall continue the performance of this Contract to the extent not terminated.

b. Termination for Default

- (1) Buyer may terminate this Contract for default if Seller: fails to assure timely performance, fails to perform on time, ceases performance prior to completion of this Contract, evidences insolvency or financial inability to perform, or fails to cure the material breach of any other provision of this Contract within ten (10) days of notice of such breach.
- (2) In the event Buyer terminates this Contract in whole or in part, Buyer may procure, upon such terms and in such manner as Buyer may reasonably determine, services similar to those of Seller and/or products similar to those specified herein, and Seller shall be liable to Buyer for any excess costs for such similar services and/or products. If this Contract is terminated only in part, Seller shall continue the performance of this Contract to the extent not terminated.
- (3) Upon termination of this Contract, Seller shall immediately cease performance of its work under this Contract, shall immediately return to Buyer all information, materials and documents acquired from Buyer, and shall immediately provide to Buyer all information, materials and documents prepared or developed by Seller in connection with performance of this Contract. Further, Seller's obligations as set forth in the Property Rights in the Goods and the Confidentiality of Data and Information articles herein shall survive any termination of this Contract.