

HM DUNN AEROSYSTEMS PURCHASING TERMS AND CONDITIONS

1. **Definitions** – Unless otherwise defined herein, capitalized terms in this Agreement will have the meanings set forth below. If other definitions appear at other locations in this Agreement, that definition will control.
 - a. “Agreement” means the Purchase Order issued by Buyer, these Purchasing Terms and Conditions, and any associated Specifications.
 - b. “Affiliate” means (in relation to any entity from-time-to-time) any other entity controlling, controlled by or under common control with that entity.
 - c. “Applicable Law” means all applicable statutes, orders, rules, provisions, regulations, directives and guidelines that have legal effect, whether local, national, international or otherwise existing from time to time, including all rules, requirements, standards and guidelines; all health and safety requirements, all environmental regulations concerning the Products, their manufacture, packaging and disposal (where appropriate), and any other legislation, regulations or requirements notified in writing by Buyer to the Seller from time to time as constituting Applicable Law.
 - d. “Authorized Representative(s)” means the individuals having primary responsibility for the negotiation and acceptance of this Agreement.
 - e. “Buyer” means HM Dunn Company, Inc., a Delaware corporation.
 - f. “Buyer Proprietary Product” means any Product manufactured or otherwise supplied by Seller using Buyer’s Proprietary Information or Specifications.
 - g. “Component Escape(s)” means the occurrence of any quality, compliance, performance, adherence to specifications or similar issue that may result in defective or non-complying Products, including, without limitation: (i) material or manufacturing issues that affect a Product’s compliance with, or performance to, original specifications; (ii) airworthiness issues for the Product, a component of the Product or the end-use of the Product; or (iii) FAR non-compliance issues.
 - h. “Delivery Date” means the date specified by Buyer in the Purchase Order by which delivery of Products to the designated location will occur.
 - i. “Document(s)” means any plan, design, drawing, Specifications, picture or other image, or any other written, electronic or other information recorded in any form.
 - j. “Effective Date” means the date on which this Agreement is executed by both Parties.
 - k. “Nonconformance” or “Nonconformity” means failure to meet all requirements of this Agreement.
 - l. “Party or Parties” means Buyer and Seller or both.
 - m. “Planned Delivery Time” means maximum number of calendar days between the date of issuance of a Purchase Order and the date of Delivery of the Products. Seller’s lead time will be specified in the Purchase Order.
 - n. “Price” means the cost to Buyer in money of the Product(s) and Services subject to a Purchase Order, calculated in accordance with the provisions stated herein.
 - o. “Product(s)” means any components, items, replacement items or any other materials, and any part thereof supplied to Buyer pursuant to a Purchase Order.
 - p. “Proprietary Information” means the information described in Section 11 of this Agreement and Buyer Proprietary Product. All references to Proprietary Information include related and derived materials.

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- q. “Purchase Order” or “PO” means (i) any document designated by Buyer as a “purchase order” or Buyer-generated purchase document; and (ii) any delivery schedule, pursuant to which Buyer orders Product(s) or Services.
 - r. “Purchase Order Terms and Conditions” means the provision set out in this document entitled “H.M. Dunn Company, Inc., Purchasing Terms and Conditions.”
 - s. “Reject” or “Rejection” means to refuse to accept as more fully described in Section 7.
 - t. “Seller” means the seller identified on the Purchase Order incorporating these Purchasing Terms and Conditions.
 - u. “Services” means any and all services that are provided to Buyer under this Agreement, to include, without limitation, all services provided in connection with tests and inspection of the Products and in receiving, cutting, forming, manufacturing and packaging the Products, to include, without limitation, Support where Support requirements are identified.
 - v. “Specification(s)” means the Document(s) that sets out the required characteristics, features, standards and functions for the Products as referenced in any related Document.
 - w. “Support” means all the activities and obligations of Seller described herein and in any Purchase Orders and Documents that sustain and maintain the Products.
2. **Contract Formation.** Any offer by Buyer to purchase Products or Services from Seller will be described in a Purchase Order (supplemented by the Purchase Order Terms and Conditions, which are incorporated in any Agreement) and will be strictly limited to Seller’s acceptance of the provisions set out in the Purchase Order as supplemented by the Purchase Order Terms and Conditions. If the “Federal Acquisition Regulations” or “FAR” or “Defense Federal Acquisitions Regulation Supplement” or “DFARS” are called out or incorporated by reference in a Purchase Order, the term “Contractor” will mean Seller. “Contracting Officer” will mean Buyer and “Government” will mean Buyer. Any attempt by Seller to attach or insert additional, different or inconsistent terms and conditions in its quotation, acknowledgement or acceptance of a Purchase Order or otherwise, are rejected and will be void and of no effect. Buyer's acceptance of Products or Services from Seller will not be deemed to be an acceptance of any such additional, conditional, different, or Inconsistent terms and conditions. No changes or additions of any kind to the terms and conditions stated in a Purchase Order, or purported waiver of any kind will be binding on Buyer unless agreed to in a writing signed by an Authorized Representative of Buyer. Commencement of performance by Seller will be an acceptance of the Agreement exactly as described in the Purchase Order. Unless otherwise stated in a Purchase Order, terms of payment are Net Ninety (90) days after delivery of Products or Services and receipt of proper invoices. Buyer may obtain Products or Services of the same type as those covered by the Agreement from any party in Buyer’s sole discretion or Buyer may produce or obtain such services internally or through Affiliates.

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3. **Shipping and Billing.**

- a. Seller will comply fully with all shipping and billing instructions of Buyer. All Products will be shipped F.O.B. as stated on the face of the Purchase Order. If goods are shipped F.O.B. destination or Buyer's destination, shipping charges must be prepaid by Seller in all cases. No insurance premium or other shipping costs (including, without limitation, charges for cartage, or packing) may be charged to Buyer unless authorized in writing by Buyer. Products must be packed and delivered to conform with applicable Uniform Freight Classifications to obtain lowest shipping rates. Packing slips must be enclosed with all shipments showing order number, line number, release number, if any, and quantity. Expenses incurred by Buyer from Seller's failure to ship in accordance with Buyer's shipping instructions will be charged to Seller's account and Seller will promptly reimburse Buyer for such costs.
 - b. Time is of the essence. All Products must be shipped in time to meet the delivery schedules specified in the applicable Purchase Order. Seller will pack Products to prevent damage and deterioration. Buyer may withhold or deduct from amounts owed to Seller for any losses or expenses Buyer incurs from damage or deterioration to Products caused by packing and shipping.
 - c. Seller will mail packing lists in duplicate and itemized invoices, all bearing the Purchase Order number and [Product] identification numbers, to Buyer on the day of shipment. Seller will attach to Seller's invoice a bill of lading or express receipt, bearing the Purchase Order number after the Buyer's name. Invoices subject to cash discount must be mailed on the day they are dated and, if not, the discount period begins on the day received by Buyer's accounting department. If a bill of lading or express receipt is not attached to the invoice, the discount period will begin when documents are received by Buyer's accounting department. All costs and expenses incurred by Buyer resulting from Seller's failure to furnish necessary documents will be charged to and paid by Seller. Buyer will have no liability for Products delivered to Buyer that are in excess of quantities specified in delivery schedules. Buyer reserves the right to return at Seller's risk and expense all Products received by Buyer in advance of the assigned date for delivery. Seller will retain and bear all risk of loss and damages to all Products ordered until they are actually received by the Buyer.
 - d. On all non-compliant shipments the Seller will be charged a \$250.00 administration fee for the following reasons:
 - i. Seller error that results in a discrepant shipment being received in circumstances which do not permit inspection and receipt of shipment.
 - ii. The Seller's product is rejected at Buyer's facility
 - iii. Product shipped above the allowable Purchase Order tolerance without prior approval from Buyer.
4. **Price.** All prices include packaging and shipping F.O.B. Buyer's destination unless Buyer waives this requirement in writing. Seller warrants that the prices quoted to Buyer are the lowest that these or similar Products or Services are sold by Seller to others and that they are complete and that no additional charges of any type will be added without Buyer's express advance written consent. Seller agrees that any price reduction for these or similar

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Products or Services after placement of a Purchase Order but prior to payment will be applicable to the subject Purchase Order. Seller represents that any price or prices established for a Purchase Order will not exceed Seller's current selling prices for the same or substantially similar goods. Unless otherwise stipulated all prices inserted on the face of a Purchase Order will represent the total cost to Buyer at the point of delivery specified therein, including, without limitation, all sales taxes, excise taxes and custom duties and other Government and Municipal taxes, levies and charges of every description and charges for packing, crating, boxing, storage, staging, cartage and shipping charges. If price is not stipulated on the Purchase Order, it is not to be filled at higher prices than last previously quoted or charged without prior written authority of Buyer. Buyer will not be liable under any circumstances for any claim for a price increase for Products or Services after Buyer has paid for such Products or Services.

5. **Payments.** Unless different payment terms are set out on the face of a Purchase Order, payment terms will be net within 90 days of receipt of the covered Products or Services and properly completed and submitted invoices. Payments of an invoice from Seller does not constitute acceptance of the Products or Services covered by the invoice. If the work covered by an invoice gives rise to mechanics' liens or the like, payment will not be due and will not commence until Seller has delivered to Buyer a complete release of all liens arising out of the work or a copy of receipt for payment in full covering all labor and materials for which a lien could be filed, or a bond satisfactory to the Buyer indemnifying it against any lien.

6. **Changes.** Buyer will have the right at any time prior to the complete delivery of the Products or Services to make changes therein and changes in packaging, time, place and schedule of delivery and method of transportation. Seller agrees to accept such changes. If any such change causes an increase or decrease in the cost or the time required for Seller's performance, and an itemized claim for adjustment is made within thirty (30) days of the notice of change, an equitable adjustment will be negotiated in good faith between the parties. This agreement will be modified in writing in accordance with the agreed upon adjustment.

7. **Acceleration/Deceleration of Work**
 - a) Buyer may make changes in the delivery schedule without additional cost, liability, or change to the units prices stated in this Order if (i) the amended delivery schedule and deliverable quantities of the Item are commensurate with delivery changes received by Buyer from, or necessary to conform Buyer's performance to delivery requirements of the OEM and (ii) Buyer provides written notice of such changes. Seller shall promptly comply with such changes.
 - b) Buy may at any time, without additional cost, liability or change to the unit prices stated in this Order, require Seller to stop all or any part of the work called for by any Order for up to one hundred twenty (120) days ("Stop Work Order"). On receipt of a Stop Work Order, Seller shall promptly comply with its terms and take all reasonable steps to minimize the occurrence of costs arising from the work covered by the Stop Work Order during the period of work stoppage. Within the period covered by the

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Stop Work Order (including any extension thereof) expires, Seller shall promptly resume work in accordance with the terms of this Order.

8. **Inspection and Quality Assurance.** Title and risk of loss to all Products will remain with Seller until the Products are received by Buyer and inspected and accepted. All Products and Services ordered by Buyer will be subject before delivery to inspection, tests, and audits by Buyer at reasonable times and places. Seller agrees to provide access for Buyer to all Seller facilities at all reasonable times for such inspection, tests, and audits, and, at no additional cost, to provide all tools, equipment, and assistance reasonably necessary. Inspection, tests, or audits before delivery to Buyer will not constitute final acceptance nor do they or any other inspecting, testing, or auditing by Buyer, or failure of Buyer to do so, relieve Seller from exclusive responsibility for furnishing Products or Services in full conformance with the Purchase Order and Specifications. Seller will, at no cost to Buyer, promptly comply with any written direction from Buyer reasonably necessary to correct deficiencies in the manufacture or provision of Products or Services. Seller warrants that it has and will maintain an adequate quality assurance and control program for the Products or Services ordered and that it will make and maintain adequate authenticated quality control and assurance reports, records, certificates, affidavits, and the like relating to the Products or Services ordered. Seller agrees that upon request and at no additional charge, it will promptly furnish authenticated copies thereof as well as applicable certificates of conformance and compliance acceptable to Buyer at the time of or after delivery.
9. **Inspection, Acceptance, Rejection.** Title and risk of loss to all Products will remain with Seller until the Products are received by Buyer and inspected and accepted. Products and Services will be received subject to inspection and approval by Buyer. Buyer may give Seller notice of rejection or revocation of acceptance, notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test delay or failure to inspect, test or approve or failure to discover any defect or other nonconformance will relieve Seller of any obligations hereunder or impair or waive any right or remedy of Buyer. If it is Buyer's judgment that Products or Services do not conform with the requirements of a Purchase Order, Buyer will have the right to reject them and, in addition to its other rights and remedies, Buyer will have, without limitation, all of the following rights: (1) to return the Products to Seller for reimbursement, credit, replacement, or corrections as Buyer may direct; (2) to correct, rework, or replace Products with the additional cost to be charged to and paid by Seller; and (3) to hold Products at Seller's risk and expense for disposal or correction according to Seller's instructions. Any Products rejected by Buyer that are returned to Seller will be at Seller's risk and expense, with the cost of packaging, handling, inspection, examination, transportation and the like incidental thereto, charged to and paid by Seller. Rejected Products will not thereafter be tendered to Buyer for acceptance unless the previous Rejection and any subsequent correction are disclosed to Buyer in writing. Rejected Products will be held for Seller's instructions and at Seller's risk and expense. If instructions are not received from Seller within fifteen (15) days after notice of Rejection, Products will be returned at Seller's expense. No Products returned as defective will be replaced without Buyer's written permission. Where an approved re-work is required to meet specifications, such re-work will be arranged for by

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Seller at no cost to Buyer. Payment for Products will not constitute acceptance thereof by Buyer nor shall Buyer's inspection or omission to inspect relieve Seller of its obligation to furnish all Products in strict accordance with all terms and provisions of a Purchase Order.

10. **Termination for Convenience.** Buyer has the right to terminate a Purchase Order or this Agreement for convenience, in whole or in part, with thirty (30) days' written notice to Seller. Unless such termination is due to Seller default or failure of Seller to assure adequate performance, Buyer will pay Seller the Price of Products on a pro rata basis for work completed, materials in production and any materials the purchase of which Seller has no contractual right to cancel, provided that Buyer will not be liable for any products or materials purchased in excess of Seller's contractual lead times and Buyer's forecasts as of the date of termination and upon such payment all equipment, materials, work-in-progress, finished goods, drawings, information, special tooling, and other things for which Buyer has paid will at Buyer's option become the property of Buyer and be released by Seller to Buyer upon demand for pick-up and removal. The provisions of this section are without prejudice to any other rights or remedies of Buyer including those resulting from default by Seller.
11. **Termination for Cause.** Buyer may terminate a Purchase Order or this Agreement, in whole or in part:
- a. effective immediately, with no advance notice to Seller, if Seller
 - (1) makes an assignment for the benefit of creditors,
 - (2) is the subject of a bankruptcy or similar proceeding,
 - (3) becomes insolvent,
 - (4) suspends business,
 - (5) is the subject of appointment of a receiver for Seller's property or business,
 - (6) breaches any confidentiality covenant contained herein, or
 - (7) files a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation; or
 - b. upon the giving of ten (10) days' prior written notice to Seller, if Seller fails to give Buyer adequate assurance of performance as provided below, or if Seller breaches any covenant, obligation or term of this a Purchase Order or this Agreement and the breach described in such notice is not cured to the satisfaction of Buyer, in Buyer's sole discretion by the end of the ten (10) day notice period.
 - c. If Buyer determines for any reason (including, without limitation, Seller's financial condition, technical capability or inadequacy of personnel or other available resources) at any time or from time to time that Buyer is not adequately assured of Seller's full, timely and continuing performance hereunder, Buyer may require, by notice to Seller, specific written assurance from Seller (an "Assurance of Performance") that Seller is able to and will timely perform all of its obligations under any Purchase Order or this Agreement when and as specified. Each Assurance of Performance must be delivered by Seller to Buyer as promptly as

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possible, but no later than ten (10) calendar days following Buyer's request therefore and each Assurance of Performance must be accompanied by such supporting information, reports or other materials as Buyer may reasonably request. Except for payment for accepted Products or Services, Buyer may suspend all or any part of Buyer's performance hereunder until Buyer receives an Assurance of Performance from Seller satisfactory to Buyer. Any failure by Seller to provide an acceptable Assurance of Performance from Seller within the prescribed ten (10) day period will be grounds for Buyer to terminate any Purchase Order or this Agreement, in whole or in part, upon written notice without any further time for Seller to cure deficiencies. A termination for failure to provide an adequate Assurance of Performance will be a termination for cause.

- d. If Buyer terminates a Purchase Order or the Agreement, in whole or in part, for cause, in addition to all other remedies available to Buyer at law or in equity, Buyer will have the continuing right to obtain Products or Services from any other source or to produce them internally, with the resulting increase in the cost thereof charged to and paid by Seller. If Buyer terminates a Purchase Order or the Agreement for cause, in whole or in part, Buyer will have no liability with respect to the Purchase Order or the Agreement except for deliveries of Products and Services previously accepted.

12. **Confidentiality; Proprietary Information.** Seller agrees not to publicize the fact that Buyer has contracted with Seller and not to disclose any details or other information about any Product or Service or Purchase Order or the Agreement without Buyer's prior written permission. Unless otherwise known to the public, all information disclosed by Buyer to Seller concerning Buyer, its products, processes and methods (such as, without limitation, designs, algorithms, computer programs (in both object and source code), flow charts, listings, programmer notes, databases, technical data and reports, engineering and manufacturing drawings, research and engineering data, technical data and tooling, specifications, standards, manuals, process information, tooling and shop rights and all intellectual property rights in such information, however designated or recorded or transmitted) is confidential and proprietary ("Proprietary Information"). Seller agrees that it will not disclose Proprietary Information to or for the benefit of any other party or use Proprietary Information except for the purpose of performing a Purchase Order or this Agreement. All Proprietary Information is the property of Buyer and is to be delivered or redelivered to it promptly upon demand. Seller agrees that if the Products or Services covered by a Purchase Order are to be manufactured or provided to design or technical data furnished by Buyer, Seller will not, without the prior written consent of Buyer, manufacture any such Products or provide any such Services except for and upon order of Buyer. Seller agrees that no information disclosed by it to Buyer will be confidential unless notice thereof is given in advance to and accepted by Buyer in writing.

13. **Warranties.** Seller warrants that all Products and Services furnished to Buyer will conform to applicable Specifications, instructions, drawings, data, samples, standards, and regulations, will be merchantable, of best quality material and workmanship and will be free from all defects, will be fit for the intended purposes, and will be free from all liens

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and encumbrances. These warranties are in addition to all other warranties, expressed, implied or statutory. Seller will indemnify, defend and hold Buyer fully harmless from any breach of these warranties and these warranties are provided without prejudice to any other rights or remedies of Buyer at law or in equity. Attempts to impose limitations on Buyer's remedy (or to disclaim warranties) in documents of Seller, or otherwise, will be void and of no effect. All warranties and all provisions of this section will survive inspection or acceptance of, payment for, and use of the Products or Services and the completion, termination, or cancellation of any Purchase order or this Agreement. All warranties will run to Buyer, its customers, successors, and assigns, and to users of the Products or Services. If Seller obtains warranties from a supplier or subcontractor that are more favorable than the warranties provided herein, Seller will enforce such warranties for the benefit of Buyer to the fullest extent possible and will assign such warranties to Buyer.

14. **Buyer's Property and Parts.** All property of any kind supplied by or paid for by Buyer will be and remain Buyer's property and Seller agrees to be accountable for it and to maintain it in good condition and repair except to the extent that it is integrated into Products furnished to Buyer under this Agreement. All Buyer furnished material or supplies provided to Seller shall remain Buyer property until successful conversion by Seller to a conforming product. In the event that Seller scraps material or any supplies provided by Buyer; Buyer reserves the right of recouping all damages from Seller including material, labor and all other costs associated with the scrap components. Seller shall be liable for any damages or loss due to scrap, theft and any other instance of loss to Buyer furnished property. Parts provided by Buyer that have been or are to be processed by Seller are consigned to Seller for the work specified and remain Buyer's property. Property and parts of Buyer will not be used for any purpose except to satisfy Purchase Orders or to otherwise perform this Agreement. All Buyer's property and parts while in Seller's custody or control will be held at Seller's risk, free of all liens, encumbrances, and security interests of Seller or third parties, and will be kept insured by Seller at Seller's expense in an amount equal to replacement cost with loss payable to Buyer. Seller agrees to hold harmless, defend, and indemnify Buyer against all loss or damage to such property or parts against claims of loss or damage arising out of such property of parts while they are in Seller's custody or control. All property and parts of Buyer are subject to removal by Buyer at any time and to return upon Buyer's request.
15. **Independent Contractor.** Seller is and will remain an independent contractor. No employee, agent, or representative of Seller or its subcontractors will be deemed to be an employee of Buyer. Seller will provide all safeguards and take all necessary precautions in connection with work and services performed by Seller pursuant to a Purchase Order or this Agreement to prevent the occurrence of any accident, Injury, death, loss, or damage to any person or property and will be solely responsible therefor. Seller warrants that all work and services relating to a Purchase Order or this Agreement will be done in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards and specifications concerning safety, performance, and otherwise and, without limitation, including work and services on or to premises controlled by Buyer and to or with property or parts of Buyer. Seller agrees to indemnify, defend and hold Buyer

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harmless from all claims based on injury to or by Seller's employees, agents, or representatives or those of its subcontractors.

16. **Indemnification.** Seller will defend, indemnify, protect and hold harmless Buyer, its officers, employees, agents, representatives, customers, and users of Seller's Products and Services from and against all demands, claims, damages, loss, or liabilities of every kind and nature (including, without limitation, attorney fees and recall costs) based upon or resulting from, any defect or non-conformity in the Products or Services purchased by Buyer, or any default or breach of this Agreement by Seller, or any act or omission of Seller, its agents, employees, or representatives, or those of its subcontractors. Seller will defend, protect and indemnify, hold harmless, protect and defend the Buyer, its successors and assigns, its customers and the users of Products against all suits and from all claims, demands, judgments, settlements, costs, losses, damages, and attorney fees for actual or alleged infringement of patents, trademarks, copyrights, trade secrets, or other actual or alleged rights of third parties in connection with the Products or Services of Seller, provided that they are used as normally intended and are not made or performed to Buyer's own specifications. All obligations of Seller to indemnify, hold harmless, protect and defend Buyer are in addition to warranty obligations and all other rights or remedies of Buyer and will survive acceptance and use of the Products or Services, payment, and completion, termination, or cancellation of a Purchase Order or the Agreement.

17. **Insurance.** Seller agrees at its own expense to maintain insurance in kinds and amounts deemed reasonable by Buyer and to submit adequate certificates of insurance coverage when requested by Buyer. Without limitation, Seller will maintain public liability Insurance, including products liability, completed operations, contractor's liability, contractual liability, and protective liability, automobile liability insurance (including non-owned automobile liability), comprehensive general liability (including, without limitation, insurance against bodily injury, personal injury and property damage), workmen's compensation and employee liability insurance, that will adequately protect Buyer against all demands, claims, damages, loss, liabilities, or expenses (including attorney fees) for which Seller is obliged to indemnify Buyer. If Seller, either as principal or by an agent or employee, enters upon the property of Buyer to do any work, Seller agrees to maintain worker's compensation insurance or qualification as a self-insurer to satisfy the laws of the state in which the work will be performed.

18. **Force Majeure.** Buyer reserves the right to cancel any Purchase Order or this Agreement in whole or in part or to delay delivery or acceptance of Products or Services for causes beyond Buyer's control. At Buyer's request, Seller will hold the Products or Services pending Buyer's instructions and Buyer will be liable only for a reasonable increase in Seller's direct costs due to such holding.

19. **Compliance with Laws.** Seller agrees to ascertain and comply with all Applicable Laws, including, without limitation, all federal, state and local laws, regulations, and orders applicable to the production, sale, and delivery of the Products and Services. Upon request, Seller will furnish Buyer with certificates of compliance with such laws and requirements.

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Seller will certify that the Products and Services covered by its invoices are produced and rendered in accordance with the Fair Labor Standards Act of 1938, as amended.

20. **Compliance with Export Regulations.** Seller will comply at all times with all Applicable Laws including, without limitation, all export laws and regulations of the United States and any other governmental authority with jurisdiction, including without limitation, United States Export Administration Regulations (“EAR”), the International Traffic In Arms Regulations (“ITAR”), the United States Treasury Department’s Office of Foreign Assets Control (“OFAC”) and all other applicable laws and regulations related to the export, re-export and transfer of Products and Services and associated software and technology and information in all forms and in all ways that such laws and regulations may apply to the subject of this Agreement. Onsite services may be performed in areas that include access to restricted technical data. Seller will provide personnel qualified under ITAR and EAR for all such cases. All Seller personnel visiting Buyer locations must either be a US citizen, a Permanent Resident, or have a pre-approved Foreign National Visitor Form.
21. **Defense Contracts.** If the Purchase Order identifies a United States Department of Defense Rating and a related United States government contract, then the Products and Services covered by the Purchase Order and the Agreement are for national defense use. Seller is required to follow all provisions of the Defense Priorities and Allocations System (“DPAS”) regulations; including, but not limited to, the pass down of all applicable requirements to all sub-tier suppliers.
22. **Buyer’s Waste Material.** If a Purchase Order is for removal, transportation, treatment, storage, or disposal of waste material of Buyer (including hazardous waste), Seller acknowledges that it is an independent contractor and warrants that it has the proper knowledge, skill, equipment, and facilities required for the lawful, safe and proper handling thereof, that it will be handled in a lawful, safe and proper manner, and that all Applicable laws as well as reasonable safety precautions relating thereto will be ascertained and complied with. In addition to any other remedies to which Buyer is entitled by law or otherwise, Seller will indemnify, defend, and hold Buyer harmless from all liabilities, claims, penalties, settlements, costs, and damages, including, without limitations, attorney fees, arising out of Seller's noncompliance with this warranty. Unless otherwise specified by Buyer, or prohibited by law, all right and title to such waste material and all interests therein will automatically pass to and vest in Seller and it will become the property of Seller as soon as it is picked up or received by Seller. Seller absolves, releases, and discharges Buyer from all claims and liability to Seller arising in any way out of the waste material except for liability based on breach by Buyer of the terms and conditions of the Purchase Order.
23. **Assignments and Subcontracting.** No part of this Agreement or any Purchase Order or any payments to be made by Buyer may be assigned, delegated or subcontracted without prior written approval of Buyer, which may be granted or withheld in Buyer’s sole and absolute discretion. Such approval will not relieve Seller of any of its obligations under this contract, or otherwise, and Seller will remain fully responsible for compliance with all the terms and conditions of the applicable Purchase Order and this Agreement.

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24. **Notifications.** Seller agrees to immediately notify Buyer of any actual or possible safety problems with Products or Services. Seller will give Buyer reasonable advance notice of potential material shortages, labor disputes, insolvency or other matters that might delay or interfere with Seller's performance of this Agreement or any other Purchase Order in whole or in part. If a Purchase Order is for a minimum/maximum supply of Product, Seller will maintain Buyer's inventory levels between the prescribed minimum and maximum levels in accordance with Buyer forecasts as prescribed in the Purchase Order. If Seller finds that Buyer is using inventory significantly faster or slower than the forecast, Seller will advise Buyer of the facts so that the forecast can be adjusted and supplies of inventory maintained at acceptable levels.
25. **Component Escapes.** Seller will immediately notify Buyer in writing of any Component Escapes. Seller's notification will include at least the following: (a) "what, why, how and when" information about the Component Escape; (b) inspection methods, or if removal is required, NDT standards, tools and inspection resources, including serial numbers or batch numbers to identify parts; (c) a description of the urgency of the Component Escape and a recommended time to correct; (d) replacement or return guidance, including turn time and pool availability; (e) a statement of actions being taken to prevent recurrence; (f) a statement describing whether the Component Escape presents an Airworthiness issue, quality issue, FAR non-compliance issue, non-conformance issue, or combination of the foregoing; (g) a draft Service Bulletin, if applicable. In those cases where Seller has a Material Review Board (MRB), a statement of whether Seller's proposed Component Escape correction meets type design or a separate submission establishing why a full review by MRB for the Component Escape is not necessary.
26. **Limitation on Buyer's Liability.** Buyer will not be liable under any circumstances for consequential, incidental, or special damages of any kind or for damages in excess of the price allowable to the portion of the Products or Services on which the claim is based. Action on any claim against Buyer must commence within one year after the cause of action has accrued.
27. **Other Provisions.** The provisions of this Agreement and any applicable Purchase Order set forth the entire agreement between Buyer and Seller with respect to subjects covered therein. Provisions of the Uniform Commercial Code apply to the entire agreement and to both Products and Services of Seller. Buyer's failure to assert any right is not a waiver of that right or any other right. Time is of the essence. All money due to Seller is subject to deduction or set-off by Buyer to cover any counterclaim arising out of this or any other transaction with Seller. If the development of Products or Services results in patentable, copyrightable, or proprietary property, all rights, title, and interest thereto will belong exclusively to and be assigned to Buyer, unless otherwise specified in writing. The remedies provided herein for Buyer are cumulative and in addition to any other remedies provided in law or equity or by statute. No waiver of a breach of any provision of this Agreement will constitute a waiver of any other breach, or of such provision.

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28. Law Governing

Regardless of the place of its execution or performance, any Purchase Order is to be governed and construed according to the law of the state of Kansas without regard to the conflict of laws principles specified therein, and Seller consents to the exclusive jurisdiction of and venue in the courts of Kansas in any action arising out of any Purchase Order issued.

29. Compliance with Laws. Seller shall at all times comply with all federal, state and local laws, ordinances, regulations, and orders that are applicable to the operation of its business, and in performance of this Agreement. Seller shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses, and permits necessary to conduct that portion of its business relating to the exercise of its rights and the performance of its obligations under this Agreement. Without limiting the generality of the foregoing, Seller makes the following representations and warranties:

- A. Seller represents and warrants that it has not and its Affiliates and their respective directors, officers, employees and personnel have not made, offered, or authorized and will not make, offer or authorize any payment, gift, promise or other advantage, in connection with the matters which are the subject to this Agreement, whether directly or indirectly through any other person or entity, to or for the use or benefit of any person holding a legislative, administrative or judicial office, including: (i) any officer, employee, director, principal, consultant, agent or representative, whether appointed or elected, of any government (whether central, federal, state or provincial), ministry, body, department, agency, instrumentality or part of any of them, or any public international organization, or any state or government owned or controlled entity, agency, enterprise, joint venture, or partnership (including a partner or shareholder of such an enterprise); and (ii) any Public Official, where such payment, gift or promise would violate the Anti-Bribery Laws and Obligations. In addition, the Seller with regard to operations and/or activities under this Agreement (i) warrants that the Seller and its Affiliates and their respective directors, officers, employees and personnel have complied with, and (ii) covenant that the Seller and its Affiliates and their respective directors, officers, employees, and personnel will comply with the Anti-Bribery Laws and Obligations applicable to the Seller.

- B. Seller represents and warrants it will abide by the Anti-Kickback Act of 1986 (41 U.S.C. 51 through 58) and FAR 52.303-7. “Anti-Kickback Procedures,” except that subparagraph (c)(1) of FAR 52.203-7 shall not apply to Seller, and further that in subparagraphs (c)(2), (c)(3), and (c)(5), the term “Contractor” shall mean Seller, and subparagraph (c)(4), the term “Prime Contractor” shall mean HM Dunn and the term “Subcontractor” shall mean Seller. In addition to reporting possible violations of the Anti-Kickback Act to the Government pursuant to 41 U.S.C. 57, Seller shall report

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such violations, if related to HM Dunn, to the Director of Supply Chain, and/or Legal Counsel for HM Dunn.

ITAR and EAR Export Compliance. The Products covered by this Agreement, including any software, documentation, and any related technical data included with, or contained in, such Products, and any end products utilizing any such Products, software, documentation, or technical data (collectively, "Regulated Products") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. The Seller shall not, and shall not permit any third parties to, directly or indirectly, export, re-export, or release any Regulated Products to any jurisdiction or country to which, or any party to whom, the export, re-export, or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation, or rule. The Seller shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, partners/members/shareholders, customers, agents, distributors, resellers, or vendors. The Seller shall provide prior written notice of the need to comply with such laws and regulations to any person, firm, or entity, which it has, reason to believe is obtaining any such Regulated Products from the Seller with the intent to export or re-export.

Foreign Corrupt Practices Act Compliance. Seller represents and warrants that neither it nor any of its Affiliates or personnel performing any Services or providing any Products will make any payments or gifts to foreign governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person in connection with the performance of Services or provision of Products. Accordingly, Seller agrees that no portion of monies paid or payable in connection with this Agreement, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to, or for the use of, any officer or employee of any foreign government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of (a) inducing the recipient to misuse his or her official position to direct business wrongfully to Seller or any other person, (b) influencing any act or decision of an official in his or her official capacity, (c) inducing an official to do or omit to do any act in violation of his or her lawful duty, (d) obtaining any improper advantage, or (e) inducing a foreign official to use his or her influence improperly to affect or influence any act or decision.

Each party hereby warrants that it is in compliance with the Foreign Corrupt Practices Act of 1977, as amended and/or all other applicable anti-bribery laws or regulations. A breach of this warranty will allow the non-breaching party to immediately terminate this Agreement upon written notice.

Office of Foreign Assets Control ("OFAC"). The Seller represents and warrants it is, and for [NUMBER] years prior to the date of this Agreement has been, in compliance with all Laws administered by OFAC or any other Governmental Entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries ("Embargoed Countries"), entities, and persons (collectively, "Embargoed Targets"). The Seller is not and has not been, an Embargoed Target or otherwise subject to any Economic Sanctions Law.



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The Seller shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, the Seller shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver the Goods, Services, and/or Technology, or any portion of thereof, to or from an Embargoed Target or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.



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DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.

SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (JAN 2023)

(a) *Definitions.* As used in this clause—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

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(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS [252.227-7013](#) , Rights in Technical Data—Other Than Commercial Products and Commercial Services, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

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(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010 , Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be no applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber

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incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

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(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009 ,

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Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.