

1. Formation of Contract

This Agreement constitutes Boeing's offer to the Supplier. This offer is strictly limited to the terms and conditions included in this Agreement. The Supplier will be deemed to have accepted this Agreement by the Supplier commencing work, providing the Deliverables or otherwise by the Supplier's words or conduct indicating acceptance.

2. Definitions

In this Agreement, unless the contrary intention appears:

Acceptance means the Deliverables are found to comply in all respects with this Agreement and all goods, services, materials, documents and other information required under this Agreement have been supplied to Boeing.

Agreement means the Purchase Order, these Purchase Order Terms and Conditions, and where applicable the Special Terms and Conditions and any document expressly incorporated as part of this Agreement.

Background IP means Intellectual Property, other than Third Party IP, that is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Agreement, and is embodied in, or attaches to, the Deliverables or is otherwise necessarily related to the functioning, operation, or commercial exploitation of the Deliverables.

Boeing means Boeing Defence Australia Ltd ABN 64 006 678 119.

Boeing's Representative means the Buyer specified on the Purchase Order or any person specified in writing by the Buyer to the Supplier with authority in relation to this Agreement.

Confidential Information means any and all technical and non-technical information provided by either party to the other, and may include, but is not limited to, any patent, patent application, trade secret, copyrighted information and proprietary information (such as ideas, techniques, sketches, drawings, models, inventions, know-how, processes, algorithms, software programs, software source documents, formulae, design details and specifications, customer lists, and business forecasts and information the disclosing party provides regarding third parties).

Correctly Rendered Invoice means an invoice that: (a) is in accordance with the price or rates and any payment schedules set forth in this Agreement; (b) is delivered to the "Bill To" address or via e-mail to BDAaccountspayable@boeing.com; (c) is a tax invoice where GST is applicable; (d) includes the Purchase Order number; (e) provides sufficient detail, including description and quantities of the Deliverables, to allow Boeing to obtain a clear understanding of the work that has been performed and to which the invoiced amount relates; and (f) the amount claimed in the invoice is due for payment.

Counterfeit Goods means Deliverables or separately-identifiable items or components of Deliverables that: (a) are an unauthorised copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (b) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (c) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (d) have been re-worked, re-marked, re-labelled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (e) have not passed successfully all OEM required testing, verification screening, and quality control processes.

Deliverables means all goods, supplies or services to be provided under this Agreement, including Intellectual Property.

Delivery Date means the date specified on the Purchase Order under the field 'Delivery Date'.

Delivery Location means the location specified on the Purchase Order under the field 'Ship To'.

Effective Date means the date of the Purchase Order.

Eligible Data Breach means any unauthorised access to, unauthorised disclosure of, or loss of, Personal Information or Sensitive Information held by the Supplier, where such access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the information relates

Firm means the price is unalterable in all respects.

Foreground IP means all Intellectual Property that is created under or otherwise in connection with the Agreement, other than Third Party IP.

Hazardous Substance is a substance that meets any of the classification criteria specified in the [Approved Criteria for Classifying Hazardous Substances \[NOHSC:1008\(2004\)\]](#).

Intellectual Property means all present and future copyright, neighbouring rights and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, Confidential Information, circuit layouts and any other rights resulting from intellectual activity in the

industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Moral Rights means moral rights as set out in Part IX of the Copyright Act 1968 (Cth).

Purchase Order means a written order, placed with the Supplier by Boeing for the provision of the Deliverables in accordance with this Agreement.

Purchase Order Terms and Conditions means these purchase order terms and conditions.

Quality System means a quality system that meets the requirements of AS/NZS ISO 9001:2008 (Quality Management Systems), AS9100/AS9110/AS9120 or such other similar quality control system acceptable to Boeing.

Special Terms and Conditions means any Boeing terms and conditions in addition to the Purchase Order Terms and Conditions which are annexed to the Purchase Order Terms and Conditions.

Supplier means the entity specified as such on the Purchase Order.

Supplier Information Systems means any and all electronic information systems operated by the Supplier or operated by a third party on behalf of the Supplier, including without limitation: facilities, network communications systems, telecommunications systems, software, applications, information and data.

Supplier's Personnel includes the Supplier's agents, employees, advisers, consultants, suppliers and other contractors assisting the Supplier in the performance of this Agreement.

Third Party IP means Intellectual Property that is owned by a party other than Boeing or the Supplier and which is embodied in or attaches to or is otherwise necessarily related to the functioning or operation of the Deliverables.

Warranty Period means a period of 12 months commencing from Acceptance, unless specified otherwise in any Special Terms and Conditions or Purchase Order.

3. Precedence of Documents

In the event of inconsistency between the provisions of this Agreement, a descending order of precedence, to the extent of the inconsistency, shall be accorded to:

- the Purchase Order;
- Special Terms and Conditions (if any);
- Purchase Order Terms and Conditions; and
- any document incorporated by express reference.

4. Delivery

The Supplier will deliver the Deliverables to the Delivery Location by no later than the Delivery Date. In the event of any anticipated or actual delay, the Supplier will immediately notify Boeing in writing of the reasons for the delay and the actions being taken to minimise the delay. The Supplier will:

- deliver the Deliverables with detailed identification documentation on each single package and include a certificate of conformance / release certificate detailing the Purchase Order number, part number and description, serial number and quantity delivered; and
- provide a copy of the manufacturer's certificate of conformance along with the Supplier's release certificate where applicable.

5. Price, Payment & Taxes

The rates and prices payable for the Deliverables are Firm; include all taxes, costs and expenses relating to packaging, marking, handling, freight, insurance, and delivery and any other applicable costs and expenses; and are inclusive of any applicable taxes (excluding GST), charges, duties, levies, and the cost of obtaining all necessary licenses, permits or authorities required for the provision of the Deliverables. Subject to Acceptance, Boeing will pay the Supplier within 30 days of receiving a Correctly Rendered Invoice from the Supplier. Boeing has no liability for any other expense or cost incurred by the Supplier. The Supplier shall be deemed to have waived all charges and fees that are not invoiced within 180 days of becoming due for payment.

6. Compliance to Quality Standards

The Supplier must:

- provide the Deliverables in accordance with a Quality System;
- notify Boeing as soon as practicable if there is any change to the quality certification status of the Supplier;
- if requested by Boeing, grant Boeing, or a third party nominated by Boeing, access to the Supplier's premises, books, records and other documents to assess the Supplier's compliance with a Quality System;
- retain records confirming the Deliverable's compliance with a Quality System for a period of the service life of the Deliverables plus 5 years;
- notify Boeing as soon as practicable of any non-conformance of the Deliverables;

- f. notify Boeing of any process, material or tooling change that may impact Boeing's use of the Deliverables and provide evidence to Boeing of a first article inspection that assesses the impact of that change; and
- g. ensure that its subcontractors comply with the Supplier's obligations in this clause.

7. Inspection and Test

Boeing may inspect and test the Deliverables prior to Acceptance. If, in the reasonable opinion of Boeing, the Deliverables do not comply with the requirements of this Agreement, Boeing may reject and return the Deliverables at the Supplier's expense. Boeing shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

8. Risk and Title

Risk in the Deliverables passes from the Supplier to Boeing on the completion of both delivery and Acceptance. Ownership of, and unencumbered title to, the Deliverables or any part of the Deliverables passes to Boeing upon payment. Where payment is made in instalments, ownership passes in proportion to the percentage paid.

9. Intellectual Property

The Supplier:

- a. assigns to Boeing immediately upon its creation, the rights in and ownership of all Foreground IP;
- b. grants to Boeing a fully paid up, perpetual, royalty free, irrevocable, world-wide, non-exclusive licence in respect of all Background IP, including the right to sub-licence, to exploit, use, maintain, modify, develop, support, adapt and dispose of the Deliverables for Boeing's purposes;
- c. must use its best endeavours to ensure that Boeing is granted a licence to exercise all Third Party IP on the best available commercial terms; and
- d. undertakes to Boeing that it has sufficient right, title and interest in all Foreground IP and Background IP for Boeing to obtain and exercise all of the right, title and interest given to Boeing under this clause.

Nothing in this clause affects the ownership of Background IP or Third Party IP.

10. Confidentiality

Each party must keep confidential all Confidential Information which comes to its knowledge either directly or indirectly, and must not disclose any Confidential Information to any person except for the purposes of this Agreement and on a need to know basis. Nothing in this Agreement requires the parties to maintain the confidentiality of any Confidential Information where:

- a. at the time the Confidential Information was first disclosed, the receiving party was already in lawful possession of the Confidential Information;
- b. the Confidential Information was developed independently of the disclosing party;
- c. the Confidential Information is or becomes public knowledge other than as a result of the negligence of a party or a breach of this Agreement; or
- d. disclosure of the Confidential Information is required by legislation or court order and the party disclosing under this sub-clause has provided written notice prior to disclosing the Confidential Information.

Upon receipt of written notice from Boeing, or in any event at the termination or completion of this Agreement, the Supplier must immediately return to Boeing or (to the extent Boeing consents) destroy, delete or erase all copies of Boeing Confidential Information in its possession and control.

11. Warranty

The Supplier warrants that:

- a. this Agreement will be performed with due care and skill, within the times and in the manner specified in this Agreement;
- b. this Agreement will be performed in accordance with all applicable legislation, regulations, advisory standards, industry codes of practice and Australian Standards;
- c. it is properly licensed, equipped, organised and financed to comply with all of its obligations under this Agreement;
- d. it will use new and appropriate materials of high quality to provide the Deliverables;
- e. it employs strategies to mitigate cyber security incidents as advised by the Australian Cyber Security Centre and published on www.acsc.gov.au/infosec/mitigationstrategies.htm, as a means to prevent any security breach or compromise of Supplier Information Systems by unauthorised users, viruses, or malicious computer programs or any propagation of viruses or malicious computer programs on to any Boeing information or electronic systems;

- f. no patent, copyright, trademark, or other proprietary right employed or created by the Supplier in connection with the provision of the Deliverables infringes any Intellectual Property right, moral right or other right benefiting any third party or misappropriates any trade secret of any third party;
- g. the Deliverables will be free from any liens or encumbrances;
- h. the Deliverables will correspond with their description and will be in accordance with this Agreement, any lawful direction of Boeing and all applicable laws, ordinances, statutes, rules and regulations, professional regulations, standards and specifications;
- i. the Deliverables will be free from any defect in design, materials and workmanship and conform to all generally recognised commercial practices and standards in the industry; and
- j. the Deliverables will not be Counterfeit Goods.

The Supplier must:

- a. immediately notify Boeing in writing, of any changes to circumstances which may affect the Supplier's capacity to provide any warranty included in this clause 11; and
- b. meet all costs, irrespective of whether the costs are direct or incidental, associated with the discharge of the warranties under this clause 11, and at its own expense remedy any errors or defects in Deliverables that are in breach of this clause 11 which are notified by Boeing prior to the end of the Warranty Period.

12. Indemnity

The Supplier indemnifies Boeing, its officers, employees, agents and subcontractors from and against all claims, proceedings and demands and also all liabilities, costs, expenses, losses and damages (including legal costs and expenses on a solicitor/own client basis) incurred or suffered by any person arising out of or in connection with any:

- a. loss of, or damage to, property of Boeing;
- b. claims by any person in respect of personal injury or death;
- c. claims by any person in respect of loss of, or damage to property;
- d. claims by any third party, including in respect of Intellectual Property, export violations and Confidential Information;
- e. defence or settling of any claims, proceedings and demands; and
- f. breach of, or failure to fulfil, clause 17 or any of the requirements of any applicable workplace health, safety or environmental legislation of the Commonwealth or any State or Territory, arising out of or as a consequence of any work undertaken pursuant to this Agreement by the Supplier, or the Supplier's Personnel, except to the extent that such death, injury or property loss or damage results from any negligent act or omission on the part of Boeing.

13. Insurance

The Supplier must procure and maintain at its own expense, with a reputable insurance company, the following policies of insurance:

- a. workers compensation as required by law including a principal's indemnity extension where any work is to be undertaken in the Northern Territory or Western Australia; and
- b. public liability for an amount of not less than \$20,000,000 for any single occurrence.

On written request by Boeing, the Supplier must provide certificates of currency for insurance retained in accordance with this Agreement. If certificates of currency are not produced within 7 days of receipt of written request Boeing may withhold payment to the Supplier, or procure the appropriate insurance policies on behalf of the Supplier (and the cost of any such insurance will be a debt due from the Supplier to Boeing).

14. Termination for Default

If the Supplier:

- a. becomes bankrupt or insolvent, or being a company, goes into liquidation or has a receiver or manager appointed on behalf of its debenture holders, creditors or their assigns; or
- b. is subject to a petition presented or proceedings taken or instituted in any court for the compulsory winding up of the Supplier and not having the petition or proceedings removed within one month of service; or
- c. breaches any of the obligations specified in clauses 9 (Intellectual Property), 10 (Confidentiality), 11 (Warranty), 16 (Export Approvals), 17 (Environment, Health and Safety); or
- d. commits any act or omission, or breaches this Agreement and fails to remedy such default within seven days of delivery of a notice from Boeing requiring the Supplier to remedy the breach,

Boeing may immediately (without prejudice to any other right or remedies which Boeing may be entitled to, whether under this Agreement, at law in equity or otherwise), terminate this Agreement by serving written notice on the Supplier.

15. Termination for Convenience

Boeing, in addition to any other rights it has under this Agreement, may at any time and for any reason terminate this Agreement, by notifying the Supplier in writing that this Agreement, or a specified part of this Agreement, is terminated from the date specified in such notice. Upon receipt of a notice of termination in whole or part the Supplier must:

- a. immediately cease work on all Deliverables specified in the notice;
- b. comply with any direction that Boeing may give to the Supplier in relation to subsequent performance of this Agreement;
- c. do everything possible to mitigate all loss, cost (including the cost of compliance with any such direction) and expense arising as a consequence of the termination of this Agreement or a part of this Agreement; and
- d. terminate all affected subcontracts or supply agreements.

If requested in writing by the Supplier within a period of 30 days from the service of a notice given pursuant to this clause and supported by reasonable documentation, Boeing will pay to the Supplier all moneys due and not previously paid to the Supplier for any Deliverables completed in accordance with this Agreement and for work thereafter completed up to the effective date of termination as specified in the notice. The total sum to be paid to the Supplier will not include any consideration for loss of anticipated profits for terminated Deliverables or work, and the Supplier acknowledges that it has no claim in relation to such consideration.

16. Export Approvals

The Supplier will obtain all necessary export licences, permits or other authorities from the country of origin and marking technical data in accordance with the applicable export requirements. The Supplier will complete all documentation as required by Boeing for the purposes of complying with trade control requirements. If technical data is not clearly marked in accordance with the provisions of applicable requirements Boeing may, at the Supplier's cost, return the relevant data to the Supplier for the appropriate marking.

17. Environment, Health and Safety

Where the Deliverables are performed on premises controlled by Boeing or Boeing's customer, the Supplier will:

- a. if requested by Boeing, provide relevant documents and records to allow Boeing to assess the Supplier's compliance with a safety and/or environmental management system;
- b. ensure all Supplier's Personnel complete an induction prior to commencement of activities;
- c. ensure that its employees, directors and subcontractors will comply with the terms of Boeing Drug and Alcohol Management Plan (DAMP) published on www.boeingsuppliers.com/terms.html#/hash7, including the right for Boeing to conduct random testing and reasonable suspicion testing;
- d. comply with any directions given by Boeing with respect to environmental health and safety requirements including complying with all requirements published on www.boeingsuppliers.com/terms.html#/hash7;
- e. optimise the efficient use of natural resources, energy, water and raw materials and minimise pollution and waste;
- f. develop a Job Hazard Analysis (JHA) prior to commencement of activities;
- g. provide the JHA at any time requested by Boeing; and
- h. provide a copy of the safety data sheet for each Hazardous Substance proposed to be used.

Any incident which has the potential to cause, or actually causes, an accident, injury or illness to any individual or damage to the environment pursuant to work being performed under this Agreement must be reported to Boeing immediately unless that is not practicable, in which case it must be reported as soon as practicably possible. The Supplier will deliver a written report within 24 hours of the incident occurring. The Supplier must provide any additional information which Boeing may reasonably require. The reporting obligations set out in this clause are in addition to any obligations to report provided for in applicable workplace health, safety and environmental legislation in any State or Territory.

18. Supplier to Comply

The Supplier and Supplier's Personnel must, in carrying out this Agreement, comply with:

- a. all relevant legislative requirements including, but not limited to, the *Privacy Act 1988* (Cth), and
- b. all BDA policies, procedures and standards codes as amended from time to time and published on www.boeingsuppliers.com/terms.html#/hash7.

19. Privacy and Cyber Security Breach Notification

The Supplier shall immediately notify Boeing:

- a. in writing of an Eligible Data Breach as defined in this Agreement and the *Privacy Act 1988* (Cth); and
- b. by telephone (between appropriate representatives of the Supplier and Boeing), by text (between appropriate representatives of the Supplier and Boeing) and in writing, if the security of the Supplier Information Systems is breached or compromised in any way by unauthorised users, viruses, or malicious computer programs.

20. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or in writing, between the parties with respect to the subject matter of this Agreement. No amendment or modification of this Agreement binds either party unless it is in writing and signed by both parties.

21. Governing Law

This Agreement is governed by and is construed in accordance with the laws of the State of Queensland, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from these courts. The United Nations Convention on Contracts for the International Sale of Goods (or its successor) does not apply to this Agreement.

22. Publicity

The Supplier must not release any publicity, advertisement or news release regarding this Agreement, Boeing, Boeing's customers or the Deliverables.

23. Survivorship

Any provision of this Agreement which is expressly or impliedly intended to survive the termination or expiration of this Agreement and any rights or obligations arising on such termination or expiration are deemed to survive, including provisions relating to Confidential Information, Intellectual Property and any warranties, licences, indemnities and insurance given under this Agreement.