

## Figure C5.F4. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions

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### 1. Conditions - United States Government (USG) Obligations

- 1.1. Unless otherwise specified, items will be those which are standard to the U.S. Department of Defense (DoD), without regard to make or model.
- 1.2. The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with DoD regulations and procedures. When procuring for the Purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself; except as otherwise requested by the Purchaser and as agreed to by DoD and set forth in this LOA. Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD, the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements. Further, the Purchaser agrees that the U.S. DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.
- 1.3. The USG may incorporate anti-tamper (AT) protection into weapon systems and components that contain critical program information (CPI). The AT protection will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.
- 1.4. The USG will use its best efforts to provide the items for the dollar amount and within the availability cited.
- 1.5. Under unusual and compelling circumstances, when the national interest of the U.S. requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG shall be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services is not to be construed as cancellation or suspension of this LOA itself under this section.
- 1.6. U.S. personnel performing defense services under this LOA will not perform duties of a combatant nature, including duties relating to training and advising that may engage U.S. personnel in combat activities outside the U.S., in connection with the performance of these defense services.
- 1.7. The assignment or employment of U.S. personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or gender.
- 1.8. Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

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### 2. Conditions - General Purchaser Agreements

- 2.1. The Purchaser may cancel this LOA or delete items at any time prior to delivery of defense articles or performance of defense services. The Purchaser is responsible for all costs resulting from cancellation under this section.
- 2.2. The purchaser notes its obligations under International Humanitarian Law and Human Rights Law. The Purchaser agrees, except as may otherwise be mutually agreed in writing by the Purchaser and the USG, to use the defense articles sold hereunder only:
  - 2.2.1. for internal security;
  - 2.2.2. for legitimate self-defense;
  - 2.2.3. for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons;
  - 2.2.4. to permit the Purchaser to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the Purchaser to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; or
  - 2.2.5. for the purpose of enabling foreign military forces in less developed countries to construct public works and to engage in other activities helpful to social and economic development.
  - 2.2.6. for purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser; or,
  - 2.2.7. for purposes specified in any other bilateral or regional defense agreement to which the USG and the Purchaser are both parties.
- 2.3. The Purchaser agrees that the USG retains the right to verify reports that defense articles and services have been used for purposes not authorized or for uses not consented to by the USG.
- 2.4. The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support materiel, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies) or of the USG, and shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any items and any plans, specifications, or information furnished, whether patented or not. The Purchaser also agrees that the defense articles offered will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus, and recognizes that the U.S. Congress is required to be notified of any substantial evidence that the defense articles sold in this LOA have been used in a manner that is inconsistent with this provision.
- 2.5. The Purchaser agrees not to divert articles and services received under this LOA for purposes or uses other than those for which it was furnished, including, but not limited to, any use that could contribute to the acquisition, design, development or production of a "missile," as defined in section 74 of the Arms Export Control Act (AECA) (22 U.S.C. 2797c). The items will be used only for the purposes stated and such use will not be modified nor the items modified or replicated without the prior consent of the USG; neither the items nor replicas nor derivatives thereof will be retransferred without the consent of the USG. The USG has the right to take action under section 73(a) of the AECA (22 U.S.C. 2797b(a)) in the case of any export or transfer of any Missile Technology

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Control Regime (MTCR) equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.

- 2.6. The Purchaser will maintain the security of such article or service and will provide substantially the same degree of security protection afforded to such article or service by the United States Government. To the extent that items, including plans, designs, specifications, technical data, or information, furnished in connection with this LOA may be classified by the USG for security purposes, the Purchaser certifies that it will maintain a similar classification and employ measures necessary to preserve such security, equivalent to those employed by the USG and commensurate with security agreements between the USG and the Purchaser. If such security agreements do not exist, the Purchaser certifies that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the LOA program and that it will promptly and fully inform the USG of any compromise, or possible compromise, of U.S. classified material or information furnished pursuant to this LOA. The Purchaser further certifies that if a U.S. classified item is to be furnished to its contractor pursuant to this LOA: (a) the item will be exchanged through official Government channels, (b) the specified contractor will have been granted a facility security clearance by the Purchaser at a level at least equal to the classification level of the U.S. information involved, (c) all contractor personnel requiring access to such items will have been cleared to the appropriate level by the Purchaser, and (d) the Purchaser is also responsible for administering security measures while the item is in the contractor's possession. If a commercial transportation agent is to be used for shipment, the Purchaser certifies that such agent has been cleared at the appropriate level for handling classified items. These measures will be maintained throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed.
- 2.7. Pursuant to section 505 of the Foreign Assistance Act of 1961, as amended (FAA) (22 U.S.C. 2314), and section 40A of the AECA (22 U.S.C. 2785), the USG will be permitted, upon request, to conduct end-use monitoring (EUM) verification with respect to the use, transfer, and security of all defense articles and defense services transferred under this LOA. The Purchaser agrees to permit scheduled inspections or physical inventories upon USG request, except when other means of EUM verification shall have been mutually agreed. Upon request, inventory and accountability records maintained by the Purchaser will be made available to U.S. personnel conducting EUM verification.
- 2.8. The USG is not a party to any offset agreements/arrangements that may be required by the Purchaser in relation to the sales made in this LOA. The USG assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. Such costs shall be determined or deemed to be reasonable in accordance with SUBPART 225.73 of the Defense Federal Acquisition Regulation Supplement (DFARS). If the Purchaser desires visibility into these costs, the Purchaser should raise this with the contractor during negotiation of offset arrangements.

### 3. Indemnification and Assumption of Risks

- 3.1. The Purchaser recognizes that the USG will procure and furnish the items described in this LOA on a non-profit basis for the benefit of the Purchaser. The Purchaser therefore undertakes to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this LOA because of:
  - 3.1.1. Injury to or death of personnel of the Purchaser or third parties,

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- 3.1.2. Damage to or destruction of (a) property of DoD furnished to the Purchaser or suppliers specifically to implement this LOA, (b) property of the Purchaser (including the items ordered by the Purchaser pursuant to this LOA, before or after passage of title to the Purchaser), or (3) property of third parties, or
- 3.1.3. Infringement or other violations of intellectual property or technical data rights.
- 3.2. Subject to express, special contractual warranties obtained for the Purchaser, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to:
  - 3.2.1. The Purchaser's property (including items procured pursuant to this LOA, before or after passage of title to Purchaser), and
  - 3.2.2. Property of DoD furnished to suppliers to implement this LOA, to the same extent that the USG would assume for its property if it were procuring for itself the items being procured.

#### **4. Financial Terms and Conditions**

- 4.1. The prices of items to be procured will be billed at their total cost to the USG. Unless otherwise specified, the cost of items to be procured, availability determination, payment schedule, and delivery projections quoted are estimates based on the best available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives of:
  - 4.1.1. Identifiable cost increases that might result in an overall increase in the estimated costs in excess of ten percent of the total value of this LOA,
  - 4.1.2. Changes in the payment schedule, and
  - 4.1.3. Delays which might significantly affect estimated delivery dates. USG failure to advise of the above will not change the Purchaser's obligation under all subsections of section 4.4.
- 4.2. The USG will refund any payments received for this LOA which prove to be in excess of the final total cost of delivery and performance and which are not required to cover arrearages on other LOAs of the Purchaser.
- 4.3. The Purchaser's failure to make timely payments in the amounts due may result in delays in contract performance by DoD contractors, claims by contractors for increased costs, claims by contractors for termination liability for breach of contract, claims by USG or DoD contractors for storage costs, or termination of contracts by the USG under this or other open Letters of Offer and Acceptance of the Purchaser at the Purchaser's expense.
- 4.4. The Purchaser agrees to the following:
  - 4.4.1. To pay to the USG the total cost to the USG of the items even if costs exceed the amounts estimated in this LOA.
  - 4.4.2. To make payment(s) by check or wire transfer payable in U.S. dollars to the Treasurer of the United States.
  - 4.4.3. If Terms of Sale specify "Cash with acceptance", to forward with this LOA a check or wire transfer in the full amount shown as the estimated Total cost, and agrees to make additional payment(s) upon notification of cost increase(s) and request(s) for funds to cover such increase(s).
  - 4.4.4. If Terms of Sale specify payment to be "Cash prior to delivery", to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payment requirements for items to be furnished from the

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resources of DoD. USG requests for funds may be based on estimated costs to cover forecasted deliveries of items. Payments are required 90 days in advance of the time DoD plans such deliveries or incurs such expenses on behalf of the Purchaser.

- 4.4.5. If Terms of Sale specify payment by "Dependable Undertaking," to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payments required by contracts under which items are being procured, and any damages and costs that may accrue from termination of contracts by the USG because of Purchaser's cancellation of this LOA. USG requests for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liability, delivery forecasts, or evidence of constructive delivery, as the case may be. Payments are required 90 days in advance of the time USG makes payments on behalf of the Purchaser.
- 4.4.6. If the Terms of Sale specify Foreign Military Financing (FMF), the Purchaser will pay to the USG such costs as may be in excess of the approved FMF funding amount.
- 4.4.7. If Terms of Sale specify "Payment on delivery", that bills may be dated as of the date(s) of delivery of the items, or upon forecasts of the date(s) thereof.
- 4.4.8. That requests for funds or billing are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule, if any, contained in this LOA. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability, or evidence of constructive delivery or shipment in support of requests for funds or bills will be made available to the Purchaser by DoD upon request. When appropriate, the Purchaser may request adjustment of any questioned billed items by subsequent submission of a discrepancy report.
- 4.4.9. To pay interest on any net amount by which it is in arrears on payments, determined by considering collectively all of the Purchaser's open LOAs with DoD. Interest will be calculated on a daily basis. The principal amount of the arrearage will be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid will be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.
- 4.4.10. To designate the Procuring Agency and responsible Paying Office and address thereof to which the USG will submit requests for funds and bills under this LOA.
- 4.4.11. Any articles, equipment, materials, supplies, goods, or other commodities purchased with USG assistance funds appropriated and allocated pursuant to foreign operations, export financing, and related programs appropriations acts in support of this LOA, whether provided directly by the USG or through procurement contracts or otherwise in support of this LOA, shall be exempt from all value added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duty must be reimbursed by the Purchaser. This exemption is in addition to any other tax exemption provided by the Purchaser through separate agreements or other means.

## 5. Transportation and Discrepancy Provisions

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- 5.1. The USG agrees to deliver and pass title to the Purchaser at the initial point of shipment unless otherwise specified in this LOA. With respect to items procured for sale to the Purchaser, this will normally be at the manufacturer's loading facility; with respect to items furnished from USG stocks, this will normally be at the U.S. depot. Articles will be packed, crated, or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified other than the initial point of shipment, the supplying U.S. Department or Agency will arrange movement of the articles to the authorized delivery point as a reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.
- 5.2. The Purchaser agrees to furnish shipping instructions which include Mark For and Freight Forwarder Codes based on the Offer Release Code.
- 5.3. The Purchaser is responsible for obtaining insurance coverage and customs clearances. Except for articles exported by the USG, the Purchaser is responsible for ensuring that export licenses are obtained prior to export of U.S. defense articles. The USG incurs no liability if export licenses are not granted or they are withdrawn before items are exported.
- 5.4. The Purchaser agrees to accept DD Forms 645 or other delivery documents as evidence that title has passed and items have been delivered. Title to defense articles transported by parcel post passes to the Purchaser at the time of parcel post shipment. Standard Form 364 (Supply Discrepancy Report (SDR)) will be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification, improper documentation, or non-shipment of defense articles and non-performance of defense services. The Standard Form 364 will be submitted promptly by the Purchaser. The USG will disallow any claim, including a claim for shortage or nonperformance, received more than 1 year after delivery or more than 1 year after passage of title to the defense articles, whichever comes first, or received more than 1 year after the end of the scheduled period of performance for defense services, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. Claims for non-shipment or non-receipt of an entire lot will be disallowed by the USG if such claims are received more than 1 year after the scheduled delivery date or initial billing, whichever is later. The Purchaser agrees to return discrepant articles to the USG's custody promptly in accordance with any direction provided by the USG. The Purchaser may submit SDRs for documentation purposes regardless of the dollar value, but only SDRs valued at \$200 or more will be reviewed for possible compensation regardless of the type of discrepancy. This minimum value includes the value of the item plus any transportation and handling costs.

### **6. Warranties**

- 6.1. The USG does not warrant or guarantee any of the items sold pursuant to this LOA except as provided in section 6.1.1. DoD contracts include warranty clauses only on an exception basis. If requested by the Purchaser, the USG will, with respect to items being procured, and upon timely notice, attempt to obtain contract provisions to provide the requested warranties. The USG further agrees to exercise, upon the Purchaser's request, rights (including those arising under any warranties) the USG may have under contracts connected with the procurement of these items. Additional costs resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, will be charged to the Purchaser.
  - 6.1.1. The USG warrants the title of items sold to the Purchaser hereunder but it makes no warranties other than those set forth herein. In particular, the USG disclaims

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liability resulting from infringement or other violation of intellectual property or technical data rights occasioned by the use or manufacture outside the U.S. by or for the Purchaser of items supplied hereunder.

- 6.1.2. The USG agrees to exercise warranties on behalf of the Purchaser to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective, when such materiel is procured for the Purchaser.
- 6.2. Unless the condition of defense articles is identified to be other than serviceable (for example, "as-is"), DoD will repair or replace at no extra cost defense articles supplied from DoD stocks which are damaged or found to be defective in respect to materiel or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser will agree on the liability hereunder and the corrective steps to be taken.

### **7. Dispute Resolution**

- 7.1. This LOA is subject to U.S. law and regulation, including U.S. procurement law.
- 7.2. The USG and the Purchaser agree to resolve any disagreement regarding this LOA by consultations between the USG and the Purchaser and not to refer any such disagreement to any international tribunal or third party for settlement.