

CUBIC DEFENCE NEW ZEALAND LTD
STANDARD TERMS AND CONDITIONS
for Fixed-Price Subcontracts & Purchase Orders

1. Definitions. As used throughout this Contract, including provisions incorporated by reference, the following terms shall have the meaning set forth below:

- (a) "Buyer" means Cubic Defence New Zealand, Ltd., the legal entity issuing this order.
- (b) "Buyer's Authorized Procurement Representative" means the authorized Purchasing Agent, Subcontract Manager, or Contract Manager representing Buyer.
- (c) "Contract" means the contractual instrument (e.g., Agreement, Purchase Order, or Subcontract) into which these Standard Terms and Conditions are incorporated.
- (d) "Contractor" means "Seller".
- (e) "Goods" means supplies and services provided by Seller.
- (e) "Customer" means Buyer's customer.
- (f) "Seller" means the person, firm, or corporation executing this Contract with Buyer and which will furnish the Goods provided for herein.
- (g) "Parties" means Buyer and Seller.

2. Formation of Contract. This is Buyer's offer to purchase the Goods described in this Contract. Acceptance is strictly limited to the terms and conditions included in this document. Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer, unless specifically agreed to in writing by Buyer's Authorized Procurement Representative. Seller's acceptance of this offer shall be conclusively evidenced by commencement of performance, acceptance of this offer in writing, the delivery of Goods, or acceptance of payment. Seller acknowledges that, as part of Seller's proposal effort, it had an opportunity to review relevant documentation provided by Buyer, including, but not limited to, the Statement of Work. Seller warrants that it did such a review, that it notified Buyer in writing of any missing documentation, deficiencies, or concerns that Seller identified in any such documents, and that the issues raised by Seller were adequately addressed in this Contract at the time of acceptance.

3. Changes. Buyer may, at any time by written notice and without notice to sureties or assignees, make changes within the general scope of the Contract in any one or more of the following areas: (1) drawings, designs, specifications, or technical requirements, (2) method of shipment or packing, (3) place of delivery, inspection, or acceptance, (4) description of products to be delivered or services to be performed, and (5) delivery schedule.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, the Contract price, delivery schedule, or both shall be equitably adjusted. Any claim by Seller for an adjustment under this Article must be submitted to Buyer within twenty (20) days from the date Seller received notification of the change. Failure of the Parties to agree on the magnitude or extent of an adjustment shall not excuse the Seller from proceeding with the Contract as changed and shall be resolved pursuant to Article 22 (Dispute Resolution) herein.

If Seller considers that Buyer's conduct constitutes a change for purposes of this Article 3, Seller shall immediately notify Buyer's Authorized Procurement Representative in writing as to the nature of such conduct and its effect upon Seller's performance. Pending written direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such perceived change. Buyer shall have no obligation to reimburse Seller for any work performed in violation of this paragraph.

4. Rights and Use of Proprietary Information and Materials. All (a) proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this Article and obtained, directly or indirectly, from Buyer in connection with this Contract that are clearly marked as "Proprietary" (collectively referred to as "Proprietary Information and Materials") shall remain Buyer's property and shall be protected from unauthorized use and disclosure.

Seller shall use Proprietary Information and Materials only in the performance of and for the purpose of this Contract. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials.

Upon the completion, termination, or cancellation of this Contract, or upon Buyer's request at any time, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived there from, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying, or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article.

Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Materials. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.

The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, or termination of this Contract for a period of two (2) years. All intellectual property developed under this Contract shall belong exclusively to Buyer.

5. New Materials. Unless the purchase order/subcontract specifies otherwise, Seller represents that the materials (including, but not limited to, raw materials, parts, items, components, supplies, and end products) delivered to Buyer under this Contract are new. New, as used in this Article, means previously unused and composed of previously unused materials. If the Seller believes that furnishing other than new materials will be in Buyer's interest, Seller shall notify Buyer in writing and request authorization to use such materials

6. Warranty. Seller warrants that all Goods furnished under this Contract shall conform to all specifications and requirements of this Contract, shall be fit and sufficient for the purposes intended, and shall be free from defects in materials and workmanship for a period of two (2) years from the date of acceptance by Buyer. Such warranties, together with Seller's service warranties and guarantees (if any), shall survive inspection, testing, acceptance of, and payment for the Goods and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate end-users

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____



of the Goods. Buyer shall provide Seller with notice of any defects or nonconformities within fifteen (15) months after acceptance by the ultimate end-user. The rights and remedies of Buyer concerning latent defects shall exist indefinitely and shall not be affected in any way by the terms and conditions of this Contract. Buyer may, at its option and in addition to other remedies available at law, (i) return the defective goods for credit or refund or (ii) direct Seller to promptly repair or replace defective goods, or (iii) repair or replace the defective goods using Buyer's employees or third parties and recover the cost of such repair or replacement from Seller. Return to Seller of defective Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this Article 6 (Warranty) and Article 9 (Inspection) herein in the same manner and to the same extent as Goods originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. In addition to repairing or replacing any defective or nonconforming Goods, Seller also shall reimburse Buyer for all costs and expenses incurred by Buyer in connection with inspection and discovery of defects or nonconformities, identifying and correcting the cause of such defects or nonconformities, and all other activities reasonably undertaken by Buyer to obtain conforming Goods or attempting to obtain from the ultimate user a waiver to permit the defective Goods to be used with all or part of the defective conditions. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework, or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the Contract price.

7. Intellectual Property; Indemnity. Seller agrees to not incorporate Seller or third party intellectual property into the work product of this Contract without the express prior written consent of Buyer.

Seller shall indemnify, defend, and hold Buyer and its customer harmless from all claims, suits, actions, awards, liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any United States or foreign patent, copyright, or other intellectual property right and arising out of the Goods provided by Seller. Buyer and/or its customer shall duly notify Seller of any such claim, suit, or action; and Seller shall, at its own expense, fully defend such claim, suit, or action on behalf of indemnitees.

Seller shall have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by Seller.

For purposes of this Article 7, the term Buyer shall include Cubic Corporation, all of its subsidiaries, and all officers, agents, and employees of Buyer.

8. Delivery/Schedule. Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. Failure of the Seller to meet shipment or delivery schedules may constitute grounds for default termination. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii), if requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance pursuant to Article 18 (Force Majeure) herein. The added premium transportation costs shall be borne exclusively by Seller. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer. Title and risk of loss shall remain in and with Seller until Goods are delivered to the F.O.B. point specified in the Contract. Notwithstanding such delivery, Seller shall bear risk of loss or damage to Goods purchased hereunder from the time that Buyer provides notice of rejection of Goods pursuant to Article 9 (Inspection) herein.

9. Inspection. Buyer and Buyer's customer shall have the right to inspect the Goods at any time during the manufacture or fabrication thereof at Seller's facilities or elsewhere. Such inspection may include, without limitation, raw materials, components, work in process, and completed products, as well as drawings, specifications, and released data. Final inspection and acceptance shall be after delivery to the delivery point designated by Buyer. If any inspection or test is made by Buyer at Seller's facilities or elsewhere, Seller shall provide reasonable facilities and assistance for inspection personnel. Buyer may reject all Goods supplied hereunder which are found to be defective. Goods so rejected may be returned to Seller at Seller's sole expense. No inspection, examination, or test, whether by Buyer or Buyer's customer and whether made under the Contract or another contract for the same or similar products, shall relieve Seller, or be claimed by Seller to relieve it, of any obligation to fully comply with all requirements of the Contract (including, but not limited to, the obligation to produce Goods that comply with all required drawings and specifications). At Buyer's request, Seller shall repair or replace defective Goods at Seller's sole expense. Failure to inspect Goods, failure to discover defects in Goods or payment for Goods shall not constitute acceptance or limit any of Buyer's rights or remedies hereunder (including, but not limited to, Buyer's rights and remedies under Article 6 (Warranty) herein). In the event inspection reveals a defect or defects and schedule urgency requires that Buyer correct the defect(s) to meet Buyer's obligation to Buyer's customer, all costs of correction (including, without limitation, installation, removal, time, material, and appropriate indirect and overhead expenses) shall be charged to Seller.

10. Quality Control. Seller shall establish and maintain a Quality assurance system that complies with the Contract's requirements (including Purchase Order notes) and is acceptable to Buyer. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers during Contract performance and for three years after final payment.

11. Seller Notice of Discrepancies. Seller shall immediately notify Buyer in writing when discrepancies in Seller's process, materials, or approved inspection/quality control system are discovered or suspected which may materially affect the Goods delivered or to be delivered under this Contract.

12. Packing and Shipping. All delivered supplies shall be preserved, packaged, packed, and marked in accordance with instructions or specifications referred to or incorporated by reference in this Contract. In the absence of such instructions or specifications, for domestic shipments, the shipment shall be made F.O.B. (Buyer's Facility) utilizing best commercial practice adequate (i) to assure safe arrival at destination; (ii) for storage and for protection against the elements and transportation, (iii) to comply with carrier regulations appropriate to the method of shipment used, and (iv) to secure lowest transportation cost.

All shipments against this Contract to be forwarded on one day via the same route must be consolidated. A packing list, showing Buyer's purchase order/subcontract number, Contract item number and description of contents must be included in each package. Buyer's purchase order/subcontract number must appear on all packages, boxes, bills of lading, invoices, correspondence, and other documents pertaining to this Contract.

If Seller's deliveries fail to meet schedule, Seller, at its own and sole expense, shall use an expedited method of shipment requested and specified by Buyer until all deficiencies are corrected and deliveries are on schedule.

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____



13. Excess Quantities. Goods shall not be shipped in excess of quantities and shipping tolerances, if any, specified in the Contract. Seller shall be liable for handling charges and return shipping costs for any excess quantities.

14. Buyer's Assistance and Cooperation. During Seller's performance of this Contract, Buyer may, but has no obligation to, provide assistance to, or cooperate with, Seller in activities that facilitate the proper performance and completion of this Contract by Seller. Such assistance and cooperation may include, without limitation: (a) providing engineering or other analysis or advice on correcting manufacturing deficiencies or other problems; (b) acquiescing in a change of manufacturing facilities or location; (c) refraining from strict enforcement of time schedule requirements under the Contract; and (d) permitting the use test materials or documentation not performed or produced under the Contract. Such assistance or cooperation by Buyer shall not be construed, and Seller agrees that it will not claim that any such assistance or cooperation constitutes or operates, to relieve Seller from complete, proper, and punctual performance of all Seller's obligations under the Contract.

15. Stop Work Order. By written notice to Seller, Buyer may, at any time, require Seller to stop all or part of the work called for by the Contract for a period of up to ninety (90) days after such notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within ninety (90) days after issuing the Stop Work Order (or within any extension of time mutually acceptable to both Parties), Buyer shall either cancel the Stop Work Order or terminate the Contract in accordance with Article 16 (Termination for Convenience) or Article 17 (Termination for Default) herein, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. If the Stop Work Order results in an increase in the time required for performance of the Contract or in Seller's costs properly allocable thereto, the delivery schedule or Contract price (or both, if appropriate) shall be equitably adjusted and the Contract shall be modified accordingly in writing. The amount of any adjustment in the Contract price shall be determined as provided in Article 3 (Changes) herein.

16. Termination for Convenience. Buyer may terminate all or any part of this Contract by written notice to Seller. In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate, using its standard record keeping system to the satisfaction of the Buyer, have resulted from the termination. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided or any anticipatory profits related to work under the Contract not yet performed. Failure to agree shall be deemed a dispute, which shall be resolved under Article 22 (Dispute Resolution) herein. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. Seller shall continue all work not terminated.

17. Termination for Default. Buyer may terminate all or any part of this Contract by written notice to Seller if: (a) Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (b) Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, does not cure the failure within ten (10) days after receipt of notice from Buyer specifying the failure; or (c) in the event Seller declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue work not terminated. If the Buyer terminates all or any part of this Contract, Buyer may acquire, under terms and conditions and in a manner the Buyer considers appropriate, Goods similar to those terminated, and the Seller shall be liable the Buyer for any excess costs for those Goods including, without limitation, all costs and expenses of the types specified above in Article 6 (Warranty).

If the Contract is terminated for default, Buyer (in addition to any other rights provided in this Contract) may require the Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (a) any completed Goods and (b) partially completed Goods, supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter collectively referred to as "Manufacturing Materials") that the Seller has specifically produced or acquired for performance of such part of this Contract as has been terminated; and Seller, upon direction from Buyer, shall protect and preserve property in Seller's possession in which Buyer or Buyer's customer has an interest. Buyer shall pay for completed Goods delivered and accepted in accordance with the prices set forth in the Contract. Buyer and Seller shall agree on the amount of payment for in process Goods or Manufacturing Materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be deemed a dispute, which shall be resolved under Article 22 (Dispute Resolution). Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price.

If, after notice of termination of the Contract under this Article 17, it is determined for any reason that Seller was not in default under the provisions above or that the default was excusable pursuant to Article 18 (Force Majeure) herein, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Article 16 (Termination for Convenience) herein.

The rights and remedies provided Buyer in this Article shall not be exclusive and are in addition to any other right or remedies provided by law, in equity, or under the Contract.

18. Force Majeure. Seller shall not be liable for any excess costs or other damages if Seller's failure to perform arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not limited to: (a) acts of God or of the public enemy, (b) acts of the Government in its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes, and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the delay is caused by a delay of a subcontractor or Seller and if such delay arises out of causes beyond the reasonable control of both, and without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause.

19. Payment. Buyer shall pay for all Goods within thirty (30) days from (a) the date Goods are received if Seller is on the "Pay from Receipt Program" or (b) the date of a receipt of an acceptable invoice if later unless the Parties agree to a cash discount for early payment. In the event of early-unauthorized delivery of Goods by Seller, payment shall be computed from the scheduled delivery date, including discount periods. Buyer may pay Seller by electronic funds transfer (EFT) or by cheque unless otherwise stated in the Contract. Seller shall provide Buyer with its EFT information. Payment is made on the day Buyer gives instructions to execute payment, or the date Buyer's cheque is deposited into the U. S. mail, or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

20. Taxes. The prices invoiced under this Contract include, and Seller is liable for and shall pay, all taxes, impositions, charges, and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____



include any taxes, impositions, charges, or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

21. Governing Law. The validity, performance, and construction of this Contract shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. Jurisdiction and venue for any legal action between the Parties arising out of or relating to the Contract or the Goods furnished hereunder shall be maintained in San Diego County, California.

22. Dispute Resolution. Disputes, claims, or controversies arising out of or relating to the Contract or the Goods furnished hereunder (hereinafter referred to as "Arbitration Claims") that cannot otherwise be resolved by good faith negotiations of the Parties, shall, at the request of a Party, be settled by binding arbitration in accordance with the International Dispute Resolution Procedures of the International Centre for Dispute Resolution (ICDR) that are then in effect. The Parties shall attempt to agree upon the selection of a single arbitrator who is unrelated to either Party. In the event the Parties are unable to select a mutually acceptable arbitrator, the arbitrator shall be appointed by the ICDR. All arbitration proceedings shall be held in Auckland, New Zealand. The arbitrator's costs shall be borne equally by the Parties and each Party shall be responsible for its own preparation, discovery, and internal and external costs incurred to prosecute or defend the Arbitration Claim. The prevailing Party in any arbitration proceeding will be entitled to, in addition to any other relief granted, recover its reasonable costs and attorney's fees, as determined by the arbitrator. The arbitrator shall be bound by the express provisions of this Agreement in deciding any Arbitration Claim. The determination of the arbitrator shall be final, and except as provided by law, shall not be subject to appeal or judicial review. Any court of competent jurisdiction may enforce any award or determination rendered by the arbitrator. The arbitrator shall not have the authority to award damages for lost profits or consequential damages, or special, punitive, or other exemplary damages of any sort. Each Party is required to continue to perform its obligations under the Contract pending resolution of any Arbitration Claim unless to do so would be impossible under the circumstances. The requirements of this Article 22 shall not be deemed to constitute a waiver of any right of termination under the Contract.

23. Rights and Remedies. Any failures, delays, or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and are in addition to any other rights or remedies that the Parties may have at law or in equity.

24. Assignment and Subcontracting. Seller shall not assign any of its rights or interests in this Contract and/or all or substantially all of its performance of this Contract without Buyer's prior written consent, which shall not be unreasonably withheld. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. No assignment, delegation, or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This Contract shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties. This Article 24 does not limit Seller's ability to purchase standard commercial supplies or raw materials.

25. Gratuities. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents, or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

26. Publicity. Except as required by law, neither Seller nor Seller's subcontractors at any tier shall issue any press release or make any other public statement relating to this Contract, any work done under this Contract, or any of the transactions contemplated by this Contract without obtaining the prior written approval of Buyer as to the contents and the manner of presentation and publication of such press release or public statement. Seller shall be liable to Buyer for any breach of such obligation by any of Seller's subcontractors.

27. Compliance with Applicable Laws. Seller warrants that, in the performance of the Contract, it shall comply with all applicable laws, statutes, orders, rules, regulations, and ordinances and agrees to indemnify and hold Buyer harmless against any loss, cost, damage, or liability by reason of Seller's violation of this warranty. At no cost to Buyer, Seller shall procure all licenses/permits and pay all fees and other charges necessary for Seller to fulfill its obligations under the Contract.

28. Foreign Offset. All offset credits resulting from this Contract are the sole property of Cubic Corporation to be applied to the offset program of its choice. Seller agrees to assist Cubic Corporation, at no cost, in securing appropriate offset credits from the respective governmental authorities.

29. Export Control. Seller agrees to comply with all applicable export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120, et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. §§ 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.

Seller shall immediately notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by any Government entity or agency.

If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and that it maintains an effective export/import compliance program in accordance with the ITAR.

Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Seller's performance under this Contract.

Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses (including attorneys' fees, all expense of litigation and/or settlement, and court costs), arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Article.

Seller shall not export, directly or indirectly, any hardware, software, technology, information or technical data disclosed under this Contract to any individual or country for which the New Zealand and/or U.S. Government requires an export license or other government approval, without first obtaining such license or approval.

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____



Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and other expenses arising from Seller's failure to comply with this Article.

30. Severability. If a court of competent jurisdiction determines one or more provisions of this Agreement illegal or invalid, that determination shall not affect the enforceability of the remaining provisions to the extent they can be given effect without the illegal or invalid provision. The Parties further agree to negotiate the severed provision to bring the same within the applicable legal requirements to the extent possible.

31. Labor Disputes. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately provide notice thereof (including all relevant information) to Buyer.

32. Work on Buyer's Designated Premises. In the event that Seller, Seller's employees, agents, or representatives, or Seller's subcontractors enter Buyer's designated premises for any reason in connection with this Contract, Seller and such other parties shall observe all on-site security, safety, traffic, and other rules and regulations. Seller shall defend, indemnify, and hold Buyer harmless from all claims, actions, demands, loss, causes of action, and the like arising from injury (including death) to any person or damage to any property when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees, agents, or representatives, or Seller's subcontractors, save and except injury or damage caused solely and proximately by Buyer's negligence or intentional misconduct.

33. Notices. All notices, requests, demands, and other communications under this Contract must be in writing and shall be deemed duly given: (a) when personally delivered; (b) upon receipt of a telephone facsimile transmission with a confirmed telephonic transmission answer back; provided that such notice, request, demand or other communication is also sent by a nationally recognized overnight courier; (c) three (3) days after having been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid; or (d) one (1) business day after having been dispatched by a nationally recognized overnight courier service, addressed to the Parties or their permitted assigns at the address set forth on the face of the Purchase Order to which these terms and conditions are attached (or at such other address or number as is given in writing by either Party to the other).

34. Buyer Furnished Property. From time to time, Buyer may furnish property (hereinafter collectively referred to as "BFP") to Seller for performance of this Contract. Any equitable adjustment of the Contract occasioned thereby shall be made pursuant to Article 3 (Changes) herein. BFP may include, without limitation, tools, equipment, and material. All BFP shall be and remain the property of Buyer, any replacement thereof shall be and remain the property of Buyer, and Seller shall indemnify and hold Buyer harmless from all liens and claims upon BFP arising from any cause. Seller shall not modify or alter BFP (other than material) without Buyer's prior, written authorization. Seller shall plainly and conspicuously mark all BFP as the property of Buyer and shall safely store all BFP separately and apart from Seller's property. Seller shall not use BFP except for performance of work hereunder or as authorized in writing by Buyer's Authorized Procurement Representative. While in Seller's possession or control, BFP shall be maintained in good condition, shall be held at Seller's risk, and shall be kept insured by Seller (at its sole expense) in an amount equal to the replacement cost with loss payable to Buyer. To the extent BFP is not material consumed in the performance of the Contract, it shall be subject to inspect and removal by Buyer, and Buyer shall have the right of entry for such purposes without any additional liability to Seller. As and when directed by Buyer, Seller shall return BFP to Buyer (at Seller's sole risk and expense) in as good condition as originally received by Seller, less reasonable wear and tear.

35. Independent Contractor Relationship. Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Buyer.

Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses (including attorneys' fees, all expenses of litigation and/or settlement, and court costs), arising from any act or omission of Seller, its officers, employees, agents, representatives, suppliers, or subcontractors (at any tier) in the performance of any of its obligations under this Contract.

36. Configuration Control. Seller shall make no change in design, manufacturing, or assembly processes or source of supply after approval of the first production test item or after acceptance of the first completed end item without Buyer's prior, written approval. Buyer's approval of the first production test item or its acceptance of the first completed end item shall not relieve Seller from any requirements or obligations under the Contract including, without limitation, those set forth in Article 6 (Warranty) herein.

37. Discontinuance of Manufacture. Should Seller decide to discontinue manufacture of the supplies purchased by Buyer under this Contract, Seller: (a) shall provide written notice to Buyer of the intended supply discontinuance; and (b) shall provide Buyer a minimum of twelve (12) months from the written notification date to allow Buyer to place final "lifetime buy purchase orders for the supplies at a unit price to be negotiated, but in no event higher than the unit price provided in this Contract. In the event one or more "lifetime buy" purchase orders are made during such twelve (12) month period, Seller shall deliver the purchased supplies to Buyer no later than six (6) months after the end of the "lifetime buy" period. Seller's obligations under this Article shall extend for two (2) years beyond the effective date of this Contract, irrespective of whether the Contract is completed/terminated within the two (2) year period.

38. Counterfeit Parts. Seller shall take every reasonable step to ensure that only new and authentic materials are used in products delivered to Buyer. Seller may only purchase parts directly from Original Component Manufacturers (OCM's), OCM Franchised Distributors, other distributors who can provide valid certificates of conformance and have active anti-counterfeiting systems in place, and authorized aftermarket manufacturers. Use of product that was not provided by these sources is not authorized without Buyer's express, prior, and written consent. Seller must present compelling support for its request (e.g., OCM documentation that authenticates traceability of the parts to the OVM), and include in its request all actions to ensure that the parts thus procured are authentic/conforming parts.

Buyer shall impound any suspect/counterfeit parts are furnished by Seller under this Contract and notify Seller of this action. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer, and Seller shall be liable for all costs relating to the removal and replacement of said parts (including, without limitation, Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged). At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasi-Government directive (e.g., GIDEP Alert) shall be deemed definitive evidence that Seller's parts contain counterfeit parts.

Whenever Seller shall receive, either before or after shipment of Goods under this Contract, notification that any of such Goods (including any component, part, or material thereof), is the subject of GIDEP Alert, Seller shall promptly furnish such information to Buyer. Seller shall be responsible for ensuring the appropriate failure experience data report(s) (e.g., GIDEP Alert, GIDEP Safe Alert, GIDEP Problem Advisory) are generated whenever failed or nonconforming items, available to other buyers, are discovered during the course of performing this Contract.

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____



39. Headings. The title or headings of the various paragraphs hereof are intended solely for convenience or reference and are not intended and shall not be deemed to modify or explain any of the provisions of this Contract.

40. Order of Precedence. In the event that two or more provisions in this Contract are inconsistent, the inconsistency shall be resolved using the following descending order of precedence: (a) any Special Terms and Conditions; (b) these Standard Terms and Conditions; (c) the Purchase Order to which these Standard Terms and Conditions are attached; (d) the drawings, specifications, or Statement of Work; (e) other documents incorporated by reference; and (f) the Seller's proposal, if incorporated into the Contract.

41. Entire Agreement. This Contract contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Contract. No amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.

BUYER:

SIGNATURE OF BUYER: _____

FOR (Name of Business): _____

NAME OF SIGNATORY (In block Letters): _____

POSITION HELD: _____

DATE: _____

(These terms and conditions are endorsed by the Buyer on the basis that no changes/amendments are made to it. Should the Seller make further amendments, the Buyer retains the right to review such changes before final execution)

SELLER: I have read the above Terms and Conditions and agree to these terms.

SIGNATURE OF SELLER: _____

FOR (Name of Business): _____

NAME OF SIGNATORY (In block Letters): _____

POSITION HELD: _____

EXECUTION DATE: _____

As between the parties _____ and CUBIC DEFENCE NEW ZEALAND LIMITED.

dd _____