

## 1. Formation of Contract

This proposed 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, works of authorship, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents and formulae as well as each of the party's respective information concerning research, experimental work, development, design details and specifications, engineering, finance, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans 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 [BDAaccounts payable@boeing.com](mailto:BDAaccounts payable@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, but not limited to, delivery of documents, equipment, reports, Intellectual Property, technical data, plans, charts, drawings, calculations, tables, schedules, models, software, information and data stored by any means.

**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.

**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.

**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'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;
- the Special Terms and Conditions (if any);
- the Purchase Order Terms and Conditions; and
- any document incorporated by express reference as part of this Agreement.

## 4. Delivery

The Supplier must strictly adhere to all delivery schedules and provide the Deliverables to the Delivery Location within a reasonable period of, but no later than, the Delivery Date. In the event of any anticipated or actual delay, the Supplier must immediately notify Boeing in writing of the reasons for the delay and the actions being taken to overcome or minimise the delay. The Supplier must 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. Where applicable, the Supplier must provide a copy of the manufacturer's certificate of conformance along with the Supplier's release certificate.

## 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 satisfactory performance by the Supplier in accordance with the provisions of this Agreement, Boeing will pay the Supplier within 30 days of receiving a Correctly Rendered Invoice from the Supplier. Payment shall be deemed made on the date payment is tendered. Boeing has no liability for any other expense or cost incurred by the Supplier. The Supplier must promptly repay to Boeing any amounts paid in excess of amounts due to 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:

- a. provide the Deliverables in accordance with a Quality System;
- b. notify Boeing as soon as practicable if there is any change to the quality certification status of the Supplier;
- c. promptly notify Boeing of any violation of or deviation from the Supplier's approved inspection/quality control system and to advise Boeing of the quantity and specific identity of any Deliverables delivered to Boeing during the period of any such violation or deviation;
- d. 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;
- e. retain records confirming the Deliverable's compliance with a Quality System for a period of the service life of the Deliverables plus 5 years;
- f. notify Boeing as soon as practicable of any non-conformance of the Deliverables
- g. 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
- h. 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 opinion of Boeing, the Deliverables do not comply in any respect whatsoever with this Agreement, Boeing may reject and return the Deliverables at the Supplier's expense. Any such inspection or testing shall not diminish or relieve the Supplier from any obligation or liability imposed on the Supplier under or by virtue of this Agreement, and 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 latter of delivery or 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 license 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; and
- 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.

The Supplier indemnifies Boeing, its officers, employees, agents and subcontractors from and against all actions, claims, proceedings, demands and liabilities, costs, expenses, losses and damages (including legal costs and expenses on a solicitor/own client basis) and any liability incurred or suffered by any person in respect of any infringement or alleged infringement of that person's Intellectual Property rights, including Moral Rights, when the infringement or alleged infringement arises out of any activity permitted under any licence or assignment referred to in this clause or otherwise under this Agreement. 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, or with the prior written consent of the disclosing party. 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. it will provide the Deliverables in accordance with this Agreement, any lawful direction of Boeing and all applicable laws, ordinances, statutes, rules and regulations, professional regulations, standards and specifications;
- b. this Agreement will be performed within the times and in the manner specified in this Agreement, and with due skill and care;
- c. it is appropriately qualified and experienced to provide the Deliverables;
- d. it has, together with its subcontractors, sufficient numbers of properly qualified and experienced personnel at its disposal to provide the Deliverables;
- e. it is properly licensed, equipped, organised and financed to comply with all of its obligations under this Agreement;
- f. it will use new and appropriate materials of high quality to provide the Deliverables;
- g. 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; and
- h. the Deliverables shall be free from any liens or encumbrances.

The Supplier warrants, represents and must ensure that all Deliverables furnished under this Agreement:

- a. correspond with their description;
- b. conform to all express and impliedly made known specifications and requirements of this Agreement;
- c. be of satisfactory quality and be fit for any intended use or purpose held out by the Supplier or made known to the Supplier expressly or by implication;
- d. be free from any defect in design, materials and workmanship and conform to all generally recognised commercial practices and standards in the industry;
- e. not be Counterfeit Goods;
- f. containing any hardware, software or firmware: i. must not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorised access to any software or hardware; ii. must not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Boeing; or (b) may require distribution, copying or modification of any software free of charge; and iii. must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges data with it.

The Supplier must meet all costs associated with the discharge of the warranties under this clause whether such costs are direct or incidental to the discharge of the warranties, and at its own expense (including the cost of repackaging and return transport) remedy any errors or defects in Deliverables that are in breach of this clause which are notified by Boeing prior to the end of the Warranty Period.

The Supplier acknowledges that Boeing enters into this Agreement in reliance on the Supplier's warranties in this clause. The rights and remedies provided in this clause are in addition to, and shall not limit, any other rights of Boeing under this Agreement or otherwise.

### 12. Indemnity

The Supplier indemnifies Boeing, its officers, employees and agents against:

- 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; and
- e. costs and expenses including the costs of defending or settling any claim,

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. commits an act, omission, or breaches any of the obligations specified in clauses 9 (Intellectual Property), 10 (Confidentiality), 11 (Warranty), 16 (Export Approvals), 18 (Environment, Health and Safety); or
- d. where clause 14c) does not apply, 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 (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, wholly or in part, by serving on the Supplier a notice in writing. This Agreement will terminate on the date of service of the notice.

### 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 must comply with all applicable legislation, regulations and government requirements, including all applicable export, import and sanctions laws, regulations, orders, and authorisations, as they may be amended from time to time, applicable to the export (including re-export) or import of goods, software, technology, technical data or services, including without limitation the U.S. Export Administration Regulations (EAR), U.S. International Traffic in Arms Regulations (ITAR) and applicable Australian legislation. This includes without limitation obtaining all necessary export licences, permits or other authorities from the country of origin and marking technical data in accordance with the applicable requirements. It also includes completing any documentation as required by Boeing for the purposes of complying with trade control requirements. In the event that the applicable trade control approval or approvals cannot be obtained, whether in whole or in part, Boeing shall be entitled to terminate this Agreement at no cost to Boeing. 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. In the event that such data is returned to the Supplier or Boeing is held to be in breach of any export approval, caveat or condition, any delays or actions, claims, proceedings, demands, liabilities, losses, damages, expenses or costs incurred by Boeing as a result will be the subject of the indemnity referred to in clause 12.

### 18. Environment, Health and Safety

The Supplier must, in providing the Deliverables:

- a. ensure all Supplier's Personnel complete a Boeing environment, health and safety (EHS) induction prior to commencement of activities on premises controlled by Boeing or Boeing's customer, and comply with all instructions, rules and regulations set out in such induction;
  - b. comply with the statutory obligations placed upon it under any applicable EHS legislation in each State or Territory and any applicable regulations made under that legislation;
  - c. perform its obligations in such a way that Boeing, and its customers where applicable, is able to support and make full use of the Deliverables for the purposes for which they are intended without being in breach of any applicable EHS legislation;
  - d. comply with any applicable advisory standards, industry codes of practice or Australian Standards; and
  - e. comply with any directions given by Boeing with respect to EHS.
- Before commencing any activity associated with the provision of the Deliverables on premises controlled by Boeing or Boeing's customer, the Supplier must produce a written report that:
- a. lists any EHS hazards and risks associated with the activity to be conducted;
  - b. lists specific control measures that will be used to mitigate any risks associated with the activity;
  - c. details the proposed method for conducting the activity, including how EHS controls will be implemented;
  - d. if relevant, details qualifications of persons conducting the activity; and
  - e. if reasonably required, details the procedure for first aid, spill response and incident management while conducting the activity;
  - f. includes copies of all safety data sheets for any hazardous substances proposed to be used.

The Supplier must provide Boeing, upon request, with a copy of any report produced pursuant to this clause. Unless otherwise directed by Boeing, when conducting work inside workshops or hangars or within 10 metres of an aircraft or at a maintenance or product testing site, the Supplier's Personnel:

- a. must wear:
  - i. steel cap work boots (minimum type 1 boot, grade 1 toe cap – refer to AS/NZS 2210:1994);



- ii. a cotton shirt (long or short sleeve) and cotton trousers/shorts;
  - iii. safety glasses with minimum medium impact (I), clear indoor or clear or tinted outdoor in compliance with AS/NZS 1336:1997 and AS/NZS 1337:1992; and
  - iv. any other personal protective equipment that a prudent person would consider appropriate for the work being undertaken; and
- b. must ensure that all applicable environment controls are in place. These include (where relevant to the task being performed):
- i. spill containment kits;
  - ii. temporary or permanent bunding of any hazardous or non-hazardous materials; and
  - iii. waste collection facilities (including recycling).

Any incident which has the potential to cause, or actually causes, an accident, injury or illness to the Supplier's Personnel or damage to the environment pursuant to work being performed under this Agreement must be reported to Boeing within one hour of the occurrence unless that is not practicable, in which case it must be reported as soon as practicably possible. A written report detailing the events surrounding an incident referred to above must be submitted by the Supplier to Boeing's Representative within 24 hours. 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 and safety legislation in any State or Territory.

#### **19. Supplier to Comply**

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

- a. all relevant legislative requirements, and
- b. all BDA policies, procedures and standards codes as amended from time to time and published on [www.boeing.com.au/suppliers](http://www.boeing.com.au/suppliers).

#### **20. Drug and Alcohol Policy**

When performing work on BDA premises, the Supplier will ensure that its Personnel will comply with the terms of Boeing Drug and Alcohol Management Plan (DAMP) published on [www.boeing.com.au/suppliers](http://www.boeing.com.au/suppliers), including the right for BDA to conduct random testing and reasonable suspicion testing.

#### **21. Counterfeit Goods**

The Supplier must implement an appropriate strategy to ensure that the Deliverables are not Counterfeit Goods. Counterfeit Goods delivered or furnished to Boeing under this Agreement are deemed non-conforming. If the Supplier becomes aware or suspects that it has furnished Counterfeit Goods to Boeing under this Agreement, the Supplier must promptly notify Boeing and replace, at the Supplier's expense, such Counterfeit Goods with OEM or Boeing-approved Deliverables that conform to the requirements of this Agreement. The Supplier must be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic Deliverables after Counterfeit Goods have been replaced. The remedies contained in this article are in addition to any remedies Boeing may have at law, equity, or under other provisions of this Agreement.

#### **22. Entire Agreement**

Notwithstanding that the Supplier has provided Boeing with the Supplier's terms and conditions, 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 is signed by Boeing's Representative and an authorised representative of the Supplier.

#### **23. Severability**

If any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, Boeing and the Supplier must negotiate an equitable adjustment of that provision with a view to continued performance of this Agreement insofar as is practicable and the validity or enforceability of the remaining provisions of this Agreement will not be affected.

#### **24. 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.

#### **25. Publicity**

Without Boeing's prior written approval, such approval being refused at Boeing's absolute discretion, the Supplier must not, and must ensure that Supplier's Personnel must not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Agreement or the Deliverables or program to which it pertains. The Supplier shall be responsible to Boeing for any breach of such obligation by Supplier's Personnel.

#### **26. 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.