

Depot Maintenance PPP Direct Sales Agreements —Examples of Terms and Conditions—

Part I—Introduction

The preponderance of Depot Maintenance Public-Private Partnerships (PPP) involve the sale of goods and/or services to a private sector firm. Because these are sales by a government entity to the private sector, rather than a purchase from the private sector by a government entity, the contract format and terms and conditions specified in the Federal Acquisition Regulation (FAR) do not apply.

The purpose of the documents in this section of the **toolbox** is to provide examples of terms and conditions that have been successfully used in Depot Maintenance PPP direct sales agreements.

Overview of the Terms and Conditions Used in Direct Sales Agreements

Direct sales agreement is a generic term. Depending on Service- or depot-specific usage, agreements governing the sale of goods and services within the context of a depot maintenance partnership, are known as:

- Commercial Services Agreement
- Contract of Sale
- Direct Sales Contract
- Direct Sales Partnership Agreement

Some of the Services have published suggested *templates* for the terms and conditions to be used in direct sales agreements. Nevertheless, there is no required, *standard* set of terms and conditions.

The number of primary topics [also known as *articles* or *clauses*] used to organize the terms and conditions found in direct sales agreements varies from 21 to 26 depending on the Service or depot. The most commonly included topics [i.e., usage occurs in at least two Services] are shown in Table 1. For most topics, different depots use differing specific terminology. Thus, *example* and *alternative* terminology (where used) is shown in Table 1. The only topics using common terminology, and used universally, are: CHANGES, ORDER OF PRECEDENCE, and ENTIRE AGREEMENT.

The ordering of topics also varies among Services/depots. The order shown in Table 1 is an amalgam of usage. The *Example Terminology* column in Table 1 reflects the most concise, but clear, terminology among those used for each topic. These topic headings are used to organize the example terms and conditions contained in Part II—Most Commonly Included Topics.

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Table 1. Most Commonly Included Topics		
Example Terminology	Alternative Terminology	
AUTHORITY AND PURPOSE	AUTHORITY, ACCEPTANCE AND ENTIRE AGREEMENT	PARTNERSHIP AGREEMENT AND OBJECTIVES
PERIOD OF AGREEMENT	TERM	TERM AND DIRECT SALES ORDERS LIMITATION
CONSIDERATION (PRICE AND PAYMENT TERMS)	ESTIMATED COST AND FUNDING METHOD OF PAYMENT	PRICE ADVANCE PAYMENT
CUSTOMER FURNISHED PROPERTY	BUYER FURNISHED PROPERTY	DEPOT USE OF CONTRACTOR-OWNED PROPERTY
QUALITY ASSURANCE	QUALITY STANDARDS AND COMPLIANCE	INSPECTION
PUBLICITY AND NEWS RELEASES	PRESS RELEASES	CLEARANCE OF MATERIAL INTENDED FOR PUBLIC RELEASE
INFORMATION HANDLING	PROPRIETARY & COMPETITION SENSITIVE INFORMATION CLASSIFIED INFORMATION	CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS CLASSIFIED INFORMATION
INTELLECTUAL PROPERTY	PATENT AND DATA RIGHTS	
ASSIGNMENT		
CHANGES		
DISPUTES RESOLUTION	DISPUTES	RESOLUTION OF DISPUTES AND DISAGREEMENTS
TERMINATION	SUSPENSION/TERMINATION BY BUSINESS UNIT	CANCELLATION BY SELLER FOR NATIONAL INTEREST
STOP WORK ORDERS	TERMINATION BY CUSTOMER	CANCELLATION BY BUYER
INDEMNIFICATION	HOLD HARMLESS	
GOVERNING LAW	APPLICABLE LAW	
COMPLIANCE WITH LAWS		
EXPORT CONTROL	ARMS CONTROL ACT	
ORDER OF PRECEDENCE		
ENTIRE AGREEMENT		

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There are a number of topics, which although currently used by only one depot (or Service), are potentially useful to others. These are listed in Table 2 in alphabetical order. The example terms and conditions associated with these topics are contained in Part III—Other Potentially Useful Topics.

Table 2. Other Potentially Useful Topics
ADMINISTRATION
AUDIT AND OVERSIGHT
DEFINITIONS
DELIVERIES AND SHIPMENTS
DEPOT PERFORMANCE RESPONSIBILITY
EXCLUSION OF WARRANTIES
FAR, EXECUTIVE ORDERS, & OTHER ADMINISTRATIVE POLICIES
INSPECTION AND ACCEPTANCE
MISHAP INVESTIGATIONS
NON-SERVICEABLE ITEMS OR ARTICLES
NOTICE OF PERMITS, LICENSES AND RESPONSIBILITIES
ORAL STATEMENTS
TASK ORDERING
WAIVER
WORKMANSHIP WARRANTY

Lastly, it’s important to recognize that the terms and conditions in direct sales agreements tend to be augmented by technical attachments specifying the work to be accomplished. Depending on Service- or depot-specific usage, such attachments are known as:

- Implementation Agreement (IA)
- Task Description Document (TDD)
- Statement of Work (SOW)

Examples of all but a SOW [which is a common Government contracting document] are provided in section one of the *Partnership Practitioners’ Toolbox*. Additionally, many direct sales agreements involve the execution of non-disclosure statements, sometimes known as:

- Certificate of Non-Disclosure
- Proprietary Information Exchange Agreement

Examples of these are also in section one of the **toolbox**.