

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

Part III—Other Potentially Useful Topics

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With the exception of the “DEFINITIONS” section, topics are
presented in alphabetical order.

The terms and conditions, and ‘definitions,’ presented in this Part have
been extracted from documents used by various depots.

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ADMINISTRATION

All notices, certificates, acknowledgments and other reports hereunder, shall be in writing and shall be deemed properly delivered when received by mail or electronic commerce.

AUDIT AND OVERSIGHT

1. Audit and Oversight Relationships. This Agreement and the IAs issued hereunder do not create any direct right of the Contractor to audit the Depot or its books and records. The methods and degree of reporting and Contractor insight into the Depot's schedule progress, technical performance, cost incurred data, and overrun notification (for cost-type POs or DSOs) will be as specified in each IA, as appropriate to the workload involved. The overrun notification process shall be negotiated by the Parties and documented in each IA.

2. Customer Audit and Oversight. The Depot shall maintain financial records and performance documentation for a period of one year after completion of any DSOs issued hereunder. The Depot will maintain books, records, documents and other evidence of accounting procedures and practices, sufficient to properly reflect all direct and indirect costs claimed by the Depot in performance of work hereunder. Depot books, records, documents, and other supporting data shall be maintained in a manner consistent with its normal organic policies, or as further supplemented in an IA, and made available to the Contractor's designated U.S. Government representative, DCAA, for inspection and audit as required by the Contractor or the Government.

DELIVERIES AND SHIPMENTS

Delivery shall be in accordance with the delivery schedule in Attachment __, Statement of Work. The *Depot* and *Company* will jointly determine in-process schedules that will enable both parties to meet the delivery schedule shown in Attachment __ as well as other organizational workload.

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DEPOT PERFORMANCE RESPONSIBILITY

- 1. Required Performance.** The Depot shall perform the work authorized by each IA in accordance with the specific terms of the document(s), including but not limited to taking all necessary actions to perform within the schedule requirements.

- 2. Limitation on Liability.** Notwithstanding any other article in this Agreement, in no event will either Party hereto be liable to the other Party or any third party for consequential, incidental, or special (including multiple, or punitive, or other indirect) damages claimed to be incurred by the other Party, whether such claim arises under contract, tort (including strict liability) or other theory of law. Depot liability is limited to the correction of material/workmanship defects and the negligent failure to safeguard any Contractor furnished property; and limited to the cost of rework of the supply or service produced/performed, or the cost of the Contractor furnished property. Any dispute arising out of the non-performance of this Agreement by the Depot shall be remedied through Article __, “Resolution of Disputes and Disagreements,” herein. Other specific limitations to liability will be included in the IA/DSO.

- 3. Schedule Performance.** If, for any reason, the Depot will not be able to meet the schedule requirements, the cognizant Depot partnering representative shall promptly inform the Contractor, in writing, of the reasons for the delay, the actions being taken to overcome/minimize the delay, and a recovery schedule. The Parties will work together to determine the cause of the delay and potential remedies for schedule correction. In the event the Parties mutually agree that a workload should be accomplished by another source, on either a temporary or permanent basis, a bilateral modification will be issued to provide the Depot relief from obligations of additional performance.

EXCLUSION OF WARRANTIES

All articles and services provided under this Agreement are without any warranty, express or implied, including warranties of conditions of merchantability and fitness for a particular purpose.

FAR, EXECUTIVE ORDERS, AND OTHER ADMINISTRATIVE POLICIES

Depot represents that when it is performing work under this Agreement for Customer, who is under a Department of Defense prime contract, *Depot* is not subject to Federal Acquisition Regulation clauses, Executive Orders, or Administrative Policies as those Regulations, Executive Orders, or Policies apply to private parties acting as subcontractors under a Government prime contract, unless specifically invoked herein.

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INSPECTION AND ACCEPTANCE

- 1. Inspection.** Unless an alternate procedure is specifically identified in the IA, products repaired, manufactured, or serviced will be delivered to the Contractor with a Certificate of Conformance (COC) along with an attached DoD Serviceable Tag (where appropriate).
- 2. Acceptance.** Acceptance will be at the Depot unless a different location is specified in an IA or DSO. The Depot-executed COC will be used as the acceptance document.

MISHAP INVESTIGATIONS

In the event of any mishap resulting in the injury or loss of life, or loss, damage or destruction to property and/or facilities used in the performance of this Agreement, the Customer agrees to fully cooperate with and provide required technical support for any investigation to assess the cause. Both parties agree that any resulting report will be held confidential to the degree allowed by applicable laws.

NON-SERVICEABLE ITEMS OR ARTICLES

With respect to components, parts, and materials, items or articles that *Company* furnishes to *Depot* for services, *Company* agrees to inspect all such components, parts, and materials, items or articles prior to releasing same to *Depot* to ensure the items or articles are in a condition which is useable. Upon receipt of an item or article which *Depot* determines cannot be used, and is thus a non-serviceable item or article, *Depot* will return the non-serviceable item or article to *Company*, or take whatever action *Company* directs to dispose of the non-serviceable item or article. *Company* agrees to pay all costs associated with the rejection of the non-serviceable item or article.

NOTICE OF PERMITS, LICENSES AND RESPONSIBILITIES

The Contractor shall, without additional effort by the Government, be responsible for obtaining any necessary licenses and permits, giving all notices, and complying with any applicable Federal, State, and municipal laws, codes, and regulations in connection with the business carried on under this contract.

ORAL STATEMENTS

Any oral statement or representation by a representative of Buyer or *Depot* changing or supplementing this contract is unauthorized and shall confer no right upon the other party. The sale of defense articles/services herein is controlled solely by the terms and conditions contained in this contract of sale. Any terms and conditions relating to the above sale, not contained herein, shall be null and void, unless changed by subsequent agreement in writing.

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TASK ORDERING

1. Work Ordered. All work to be conducted under this Agreement will be ordered in writing by issuance of Task Orders (TO) or bilateral modifications to TO(s) and will be within the scope of the Agreement.

2. Authority. *Depot* and Customer authorized representatives will sign the TO(s), which may be issued at anytime during the term of this Agreement. Specific individuals for this purpose will be identified in a separate letter attached to this Agreement. Any change of authorized representatives or alternates will be effective upon receipt of official written notification.

3. Effective Period. Any TO(s) issued during the effective period of this Agreement and not completed within that period will be completed within the time specified in the TO(s). In no case will the end date of any TO exceed sixty (60) days from the end date of this Agreement or the negotiated completion date of the work, whichever is later.

4. TO Procedures. Each TO will be issued in accordance with the following procedures:

a) Customer will develop forecasts of repairable property, including retrofit requirements with anticipated annual induction workload, and release a Request For Proposal (RFP) to *Depot*.

b) *Depot* will respond to the RFP with proposed repair turnaround times (RTAT) and a cost estimate, which will include costs for operations management and all program related travel.

c) Customer and *Depot* will negotiate mutually acceptable RTATs; *or*

Customer will provide the RTAT.

d) Customer and *Depot* will negotiate induction schedules on a quarterly basis. Customer and *Depot* will also negotiate equitable adjustments and RTATs [*alternatively*: “Customer will establish RTATs”] for any new requirements, which will include, but are not limited to, new items or change in scope to existing Assets.

e) Customer will issue TO(s) and funding for the negotiated quarterly requirements.

f) *Depot* will submit advance-funding invoices to Customer for the negotiated quarterly requirements at least twenty (20) calendar days prior to the beginning of the quarter.

5. Scope of TOs. All TOs are subject to the terms and conditions of this Agreement.

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WAIVER

Either Party's exercise or failure to exercise any of its rights or remedies herein, including any delays or forbearances by either Party in insistence upon or enforcement of any the provisions herein, will not preclude or prejudice the other Party from exercising the same or any other right it may have hereunder, notwithstanding any previous omission or action taken. A determination that any portion of this Agreement is unenforceable or void by law will not affect the enforceability or validity of any of the remaining portions of this Agreement. In the event any part, term, or provision of this Agreement is subsequently determined unenforceable, invalid, or in violation of applicable law or regulation, the Parties agree to negotiate a replacement provision to accomplish the intent, purpose, and necessary functions of the said part, term, or provision, but without conflict to any law or regulation.

WORKMANSHIP WARRANTY

- 1. Warranty of Work.** The Depot warrants that the goods and services delivered hereunder comply with the work descriptions, specifications, and technical or data packages whether attached or incorporated by reference. Depot liability is limited to the correction of material and workmanship defects and shall not exceed the cost of rework unless otherwise specified in the IA/DSO. Material discrepancies related to the Contractor furnished property are not warranted under this article.

- 2. Actions That Void Warranty.** Any corrective action(s) unilaterally undertaken by the Contractor to correct a workmanship defect will be solely at the Contractor's expense and will void the Depot warranty.

- 3. Reporting and Correction.** In order to be considered by the Depot, a warranty claim must be received by the Depot Contracting Officer within twelve (12) months. The twelve (12) month period for supplies commences from the date delivered by the Depot, and for services from final acceptance by the Contractor or its designated representative. Acceptance of any warranty claim resides entirely with the Depot. The Depot will solely determine the appropriate means for corrective action.

- 4. Disputes.** Failure of the Parties to agree on responsibility for the corrective action will be a matter for resolution under Article __, "Resolution of Disputes and Disagreements," herein. If the Contractor requires the Depot to perform corrective action prior to resolution of the dispute, then such corrective action will be considered new work and advance payment will be required and funded in accordance with Article __, "Payment," herein. In the event the dispute is resolved in the Contractor's favor, the advance payment will be returned.

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DEFINITIONS

Authorized Representative: The individuals identified on the cover sheet of this Agreement who have full authority and power to act on behalf of their respective organizations, except as may be specifically limited in this Agreement.

Competition Sensitive Information: Information in any form, whether written or otherwise, that discloses, in whole or in part, information with respect to work performed, planned to be proposed, or actually proposed to be performed by either party, which can be reasonably expected to have a material effect on the competitive position of such party. This would include *Depot* information that is marked with any restrictive distribution statements. In addition, the information must be: (1) appropriately labeled “Competition Sensitive Information;” or, (2) oral or visual information that is verbally designated at the time of disclosure as Competition Sensitive Information and subsequently confirmed as such within thirty (30) days after the initial oral or visual disclosure in a written document marked as “Competition Sensitive Information,” listing or summarizing the oral or visual information which was disclosed as Competition Sensitive Information. Competition Sensitive Information also includes information that is derived by the receiving party from information designated as Competition Sensitive Information by the providing party. Notwithstanding the above, information will not be Competition Sensitive Information to the extent it either: (1) is in the public domain or becomes generally available to the public (through no contractual breach); (2) is received by any party from a third party free to disclose such information; or, (3) was independently developed by the party receiving the Competition Sensitive Information prior to that party’s receipt of that information.

Contractor Furnished Property (CFP): Any property owned or assigned to the Contractor and provided for Government use in support of the manufacture, repair, or delivery of goods and services pursuant to completion of a Purchase Order issued by the Contractor.

Direct Sales Order (DSO): An order for goods or services issued by the Contractor to the Government pursuant to the terms and conditions of the DSPA and the applicable Implementation Agreement (IA).

Direct Sales Partnership Agreement (DSPA): The overarching partnership agreement between the Contractor and Government defining the terms and conditions and specific rights and responsibilities of the Parties necessary for ordering and receiving goods and services.

Goods or Services: Any DoD or Defense-related goods or services produced by the Depot and delivered to the Contractor pursuant to a *Direct Sales Agreement*.

Implementation Agreement (IA): The legal and binding business document defining the specific workload agreement and implementation procedures of the Parties pursuant to a signed DSPA.

Line Item (LI): A separately priced item of work included in an Implementation Agreement or DSO priced pursuant to instructions in the IA.

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Material: Consists of subcomponents and common and unique consumable material required to repair a Weapon Replaceable Assembly (WRA) and Shop Replaceable Assembly (SRA).

Nonready for Issue (NRFI): Assets that are in an unusable condition requiring repair services and material to achieve a Ready for Issue (RFI) condition.

Property: Includes, but is not limited to, support property, special tooling, software, fixtures, adapters, etc. "Property" does not include "Material."

Proprietary Information: Any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, maskworks and art work, which is clearly identified and marked as being proprietary. Information transmitted orally or visually shall be considered to be Proprietary Information, provided it is identified as such by the disclosing party prior to disclosure, reduced to written summary form, marked as being proprietary by the transmitting party, and transmitted to the recipient within thirty (30) business days after such oral or visual transmission. During this 30-business day period, such oral or visual information shall be provided the same protection as provided Proprietary Information. Failure to so identify, reduce to writing, mark, and deliver such verbally or visually disclosed information in the manner prescribed shall thereafter relieve the receiving party of all obligations of protection with respect to the disclosed information.

Purchase Order (PO): A legal and binding order for goods or services containing provisions for acceptance and payment.

Ready for Issue (RFI): Assets that are in a serviceable, but not necessarily like new, operating condition. The RFI Asset must meet all the operational and functional requirements of authorized repair/rework technical specifications to return it to service.

Total Operating Costs (TOC): The cost to the Government for weapon system support including all life cycle cost and operational usage costs.

Work Product: The software programs including corrections, modifications, enhancements, improvements, translations, updates or upgrades, supporting documentation including delivered configuration items as well as internal artifacts, and any other derivative work or collective related work developed for or delivered to the contractor under the terms of this *Direct Sales Agreement*.

Written Notice: Includes all forms of writings, to include e-mails, by authorized representatives.