

**TERMS AND CONDITIONS OF SALE**  
COMMERCIAL ITEM SALES TO U.S. GOVERNMENT

This Terms and Conditions of Sale document sets forth the terms and conditions under which Contractor agrees to sell and the U.S. Government agrees to purchase certain commercial items and products manufactured by Contractor. These terms and conditions are consistent with the requirements of Federal Acquisition Regulation (FAR) Part 12 and FAR Clauses 52.212-4, 'Contract Terms and Conditions-Commercial Items', and 52.212-5, 'Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items'.

**1. DEFINITIONS**

The definitions of terms used herein are in accordance with FAR Clause 2.101, 'Definitions', subject to the following additions and modifications: "Contractor" means Teledyne Webb Research, a business unit of Teledyne Benthos, Inc. "Government" means the U.S. Government agency purchasing Goods from Contractor. "Goods" means the commercial items and products offered by Contractor and/or purchased by Government. "Offer" means any quote, proposal, or offer to sell Goods provided by Contractor to Government. "Contract" means any purchase order or similar instrument issued by Government, and accepted by Contractor. Contractor and Government are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

**2. ACCEPTANCE**

The terms and conditions included in this Terms and Conditions of Sale document apply to all Offers made by Contractor to Government and all of Government's Contracts accepted by Contractor. Acceptance of Government's Contract, and any changes or amendments thereto, is expressly conditioned upon Government's assent to these terms and conditions. Unless specifically agreed to in writing by a duly authorized representative of Contractor, Contractor objects to, and is not bound by, any terms or conditions that differ from or add to the terms and conditions specified herein.

**3. ORDER OF PRECEDENCE**

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (i) The schedule of supplies/services.
- (ii) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (iii) The clause at 52.212-5.
- (iv) Addenda to this solicitation or contract, including any license agreements for computer software.
- (v) Solicitation provisions if this is a solicitation.
- (vi) Other paragraphs of this clause.
- (vii) The Standard Form 1449.
- (viii) Other documents, exhibits, and attachments.
- (ix) The specification.

**4. PRICES**

Unless stated otherwise in writing by Contractor, all prices are stated in U.S. Dollars and are valid for a period of thirty (30) days from the date of Contractor's Offer. Unless accepted in its entirety within this period, Contractor reserves the right to withdraw its Offer.

**5. TAXES**

The contract price includes all applicable Federal, State, and local taxes and duties.

**6. INSPECTION / ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights: (i) within a reasonable time after the defect was discovered or should have been discovered; and (ii) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

**7. INVOICE**

The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices.

An invoice must include --

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

EFT banking information is not required if the Government waived the requirement to pay by EFT.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

**8. PAYMENT**

Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
  - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
  - (B) Affected contract number and delivery order number, if applicable;
  - (C) Affected contract line item or subline item, if applicable; and
  - (D) Contractor point of contact.
- (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

Interest. All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within thirty (30) days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.

The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

- (i) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
- (ii) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
- (iii) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

Amounts shall be due at the earliest of the following dates:

- (i) The date fixed under this contract.
- (ii) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

- (i) The date on which the designated office receives payment from the Contractor;
- (ii) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (iii) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

#### **9. FOB POINT**

Unless specified otherwise, all Goods will be shipped f.o.b. origin (Contractor's shipping dock). Government is responsible for all transportation costs.

#### **10. RISK OF LOSS**

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

- (i) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (ii) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

#### **11. TITLE**

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

#### **12. PACKING AND PACKAGING**

Contractor's prices for Goods include Contractor's standard commercial packing and packaging. Any non-standard or special packing or packaging requirements requested by Government will be provided by Contractor at additional cost to Government.

#### **13. EXCUSABLE DELAYS**

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

#### **14. TERMINATION FOR GOVERNMENT CONVENIENCE**

The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor 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 Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

#### **15. TERMINATION FOR CAUSE**

The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

#### **16. CHANGES**

Changes in the terms and conditions of this Contract may be made only by written agreement of the parties.

#### **17. LIMITED WARRANTY**

Seller warrants the Goods delivered to be free from defects in material and workmanship at the time of delivery to the F.O.B. point specified in the Order, its liability under the warranty being limited to repairing or replacing at Seller's sole option, Goods which are returned to it prepaid within twelve (12) months (for Gliders) and six (6) months (for all other Goods) from delivery to the Buyer and found to Seller's satisfaction to have been so defective. For Services, Seller warrants that all work performed by it will be done in a workmanlike manner. Seller's liability under this warranty is limited to remedying at its expense any work found to Seller's satisfaction not so performed, provided, however, Seller is notified of any claims within three (3) months from the date the Services are performed. In no event shall Seller be liable for consequential, indirect, or special damages. NO GOODS ARE WARRANTED AS BEING FIT FOR PARTICULAR PURPOSE AND THERE IS NO WARRANTY OF MERCHANTABILITY. This warranty applies only if: (a) the Goods are used safely under the operating conditions and in the manner recommended in Seller's instruction manual, specifications, or other literature; (b) the Goods have not been misused or abused in any manner or repairs attempted thereon; (c) written notice of the failure within the warranty period is forwarded to Seller and (d) Buyer provides a return notice authorizing Seller to examine and disassemble returned Goods to the extent Seller deems necessary to ascertain the cause of failure.

THIS WARRANTY DOES NOT COVER SHIPMENT, FREIGHT, TAXES, OR OTHER CHARGES, IF APPLICABLE, IN CONJUNCTION WITH THE REPAIR WORK, NOR DOES IT COVER ANY COSTS FOR MAKING ACCESS TO THE LOCATION OF THE EQUIPMENT, RECOVERY OF THE EQUIPMENT, DISMANTLING, RE-INSTALLATION, REDEPLOYMENT, OR RE-COMMISSIONING AFTER REPAIR. SELLER SHALL NOT BE LIABLE FOR COSTS RELATING TO WARRANTY WORK PERFORMED BELOW THE WATERLINE (SUBSEA), HEAVY LIFT OPERATIONS, OR TRANSPORTATION TO, FROM, AND AT OFFSHORE LOCATIONS. NO WARRANTY IS GIVEN FOR FAILURE DUE TO INCOMPATIBILITY OF SELLER'S GOODS WITH PROCESS OR ENVIRONMENTAL CONDITIONS UNLESS A FULL STATEMENT OF THESE CONDITIONS IS PROVIDED TO SELLER PRIOR TO ORDER. THE WARRANTIES STATED HEREIN ARE EXCLUSIVE. THERE ARE NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, BEYOND THOSE SET FORTH HEREIN, AND SELLER DOES NOT ASSUME ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE SALE OR USE OF SAID GOODS. Any Goods or Services repaired, replaced, or reperfomed under this warranty shall be warranted for the unexpired portion of the original warranty period only.

#### **18. RETURN AUTHORIZATIONS**

Government will promptly notify Contractor of any nonconformance(s) in the Goods and afford Contractor a reasonable opportunity to inspect the Goods. No Goods may be returned without Contractor's prior authorization, as evidenced by a return authorization. Once a return authorization number is obtained, Government will return defective Goods transportation and insurance prepaid in accordance with instructions issued by

Contractor. Failure to follow Contractor's return procedures may result in lost Goods, delays, additional service, restocking charges, warranty denial, or refusal of a shipment. The return authorization number must appear on the shipping label along with all paperwork associated with the return. Contractor has the right to reject Goods returned without the correct return authorization number clearly marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee.

**19. INDEMNIFICATION**

Each Party (the "Indemnifying Party") will hold harmless and indemnify the other Party (the "Indemnitee") against all claims, judgments, costs, and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing Goods are manufactured, sold, or used in whole or in part to the Indemnifying Party's specifications, designs, drawings, or other technical data.

To the extent that one Party's employees or agents enter on the property owned or controlled by the other Party, the first Party will indemnify and hold harmless the other Party, its officers, directors, and employees for any property damage or bodily injury or death caused by the first Party's employees or agents.

**20. LIMITATION OF LIABILITY**

Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

**21. ASSIGNMENT**

The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

**22. COMPLIANCE WITH LAW**

The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

**23. COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS**

The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

**24. UNENFORCEABLE PROVISIONS**

In the event that one or more provisions of this Contract is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.

**25. ETHICS AND VALUES**

Contractor is committed to uncompromising ethical standards, strict adherence to law, and customer satisfaction. Government is encouraged to communicate any concerns or questions regarding the ethics and value to the Teledyne Corporate Ethics Help Line, "Take the Right Action", at 1-877-666-6968.

**26. SURVIVAL**

The following Article will survive the termination or expiration of this Agreement or any Contract issued hereunder: 1: Definitions; 3: Order of Precedence; 5: Taxes; 8: Payment; 10: Risk of Loss; 11: Title; 13: Excusable Delays; 14: Termination for Convenience; 15: Termination for Cause; 16: Changes; 17: Limited Warranty; 18: Return Authorizations; 19: Indemnification; 20: Limitation of Liability; 21: Assignment; 24: Unenforceable Provisions; and 26: Survival.

**27. WHOLE AGREEMENT; AMENDMENT**

This document is the entire understanding between the Parties, and it supersedes all previous or additional agreements, arrangements, and drafts. This document may be amended or modified only by written agreement of duly authorized representatives of both Parties.

**28. FAR CLAUSES**

In addition to the terms and conditions contained in this Terms and Conditions of Sale document, the following Federal Acquisition Regulations (FAR) clauses are incorporated by reference to the extent they are applicable as indicated:

<u>FAR Clause</u>	<u>Title</u>
52.203-6 Alt. I	Restrictions on Subcontractor Sales to the Government (applicable only to Contracts exceeding \$100,000)
52.204-4	Printed or Copied Double-Sided on Recycled Paper
52.204-7	Central Contract Registration (when applicable per FAR 4.1102)
52.204-9	Personal Identity Verification of Contractor Personnel
52.212-4	Contract Terms and Conditions-Commercial Items (subject to modifications delineated herein)
52.212-4 Alt. I	Contract Terms and Conditions-Commercial Items (subject to modifications delineated herein)
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items
52.212-5 Alt. I	Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (applicable only to Contracts for Commercial Services)
52.216-23	Execution of and Commencement of Work
52.216-25	Contract Definitization
52.216-25 Alt. I	Contract Definitization
52.219-3	Notice of Total HUBZone Set-Aside
52.219-4	Notice of Price Evaluation Preferences for HUBZone Small Business Concerns
52.219-6	Notice of Total Small Business Set-Aside
52.219-6 Alt. I	Notice of Total Small Business Set-Aside
52.219-6 Alt. II	Notice of Total Small Business Set-Aside
52.219-7	Notice of Partial Small Business Set-Aside
52.219-7 Alt. I	Notice of Partial Small Business Set-Aside
52.219-7 Alt. II	Notice of Partial Small Business Set-Aside
52.219-8	Utilization of Small Business Concerns
52.219-9	Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
52.219-9 Alt. I	Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
52.219-9 Alt. II	Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
52.219-14	Limitations of Subcontracting
52.219-16	Liquidated Damages-Subcontracting Plan
52.219-22	Small Disadvantaged Business Status
52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
52.219-23 Alt. I	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
52.219-23 Alt. II	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
52.219-25	Small Disadvantaged Participation Program-Disadvantaged Status and Reporting
52.219-26	Small Disadvantaged Business Participation Program-Incentive Contracting
52.219-27	Notice of Total Service-Disabled Veteran-Owned Small Business Set Aside
52.219-28	Post-Award Small Business Program representation
52.222-3	Convict Labor
52.222-19	Child Labor-Cooperation with Authorities and Remedies
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-35	Equal Opportunity for Special Disabled Veterans
52.222-36	Affirmative Action for Workers with Disabilities
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues
52.223-9	Estimated percentage of Recovered Material Content from EPA Designated Products
52.223-9 Alt. I	Estimated percentage of Recovered Material Content from EPA Designated Products
52.225-1	Buy American Act-Supplies (applicable only to Contracts exceeding \$25,000)

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52.225-3	Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable if Contract exceeds \$25,000 but is less than \$193,000, only to the extent expressly indicated by Government)
<u>FAR Clause</u>	<u>Title</u>
52.225-3 Alt. I	Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable only if Contract exceeds \$25,000 but is less than \$50,000, and only to the extent expressly indicated by Government)
52.225-3 Alt. II	Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable only if Contract exceeds \$25,000 but is less than \$64,786, and only to the extent expressly indicated by Government)
52.225-5	Trade Agreements (applicable only if the Contract exceeds \$193,000 and the acquisition is covered by the WTO GPA)
52.225-8	Duty-Free Entry (applicable only to Contracts exceeding \$100,000)
52.225-13	Restrictions on Certain Foreign Purchases
52.225-14	Inconsistency Between English Version and Translation of Contract
52.226-4	Notice of Disaster or Emergency Area Set-Aside
52.226-5	Restriction on Subcontracting Outside Disaster or Emergency Area
52.232-29	Terms for Financing of Purchases of Commercial Items (applicable to the extent expressly authorized by Government)
52.232-30	Installment Payments for Commercial Items (applicable to the extent expressly authorized by Government)
52.232-33	Payment by Electronic Funds Transfer (applicable to the extent expressly authorized by Government)
52.232-34	Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (applicable to the extent expressly authorized by Government)
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information
52.232-36	Payment by a Third Party (applicable to the extent expressly authorized by Government)
52.233-1	Disputes
52.233-3	Protest after Award
52.233-4	Applicable Law for Breach of Contract Claim
52.239-1	Privacy or Security Safeguards
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels
52.247-64 Alt. I	Preference for Privately Owned U.S.-Flag Commercial Vessels

- End of Clauses -