

# **Exchange Retail Purchase Order Terms and Conditions**

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**OPR: MD**



**EXCHANGE**  
ARMY & AIR FORCE EXCHANGE SERVICE

**Exchange Retail Purchase Order  
Terms and Conditions  
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## **Exchange Retail Purchase Order Terms and Conditions**

The Terms and Conditions contained herein shall apply to and be effective for all goods and or services procured by the Exchange from Seller. These Terms and Conditions constitute the entire agreement between Purchaser and Seller and are collectively referred to herein as "Purchase Order". These Terms and Conditions and the Exchange Suppliers Handbook may be found at [Doing Business with the Exchange](#). The Terms and Conditions contained herein shall apply to and be effective for all Goods sold by Seller to Purchaser and all Services rendered by Seller for Purchaser.

### **1. PURCHASE ORDER OFFER AND ACCEPTANCE (JUN 15)**

Acceptance of a purchase order (PO) or shipment of merchandise constitutes Seller's agreement to: (a) the PO, (b) these terms and conditions, and (c) the Exchange Supplier Requirements. The Supplier Requirements are located at: [Exchange Supplier Requirements](#). The provisions of these terms and conditions or the applicable Exchange Supplier Requirements may be modified by Purchaser at any time. The additional terms and/or modifications will apply to POs issued after the date the changes are posted on the website. Such modifications will be posted on the Purchaser's website or otherwise provided to Seller, and shall be binding upon the parties from the date of such posting or provision to Seller, whichever date comes first.

### **2. ORDERS (JUN 15)**

Purchaser may utilize POs in writing, by facsimile or by electronic transmission, including the electronic data interchange system (EDI) in accordance with published industry guidelines and the requirements of the applicable Exchange Supplier Requirements. Verbal orders are not valid unless subsequently confirmed with a written or electronic PO. Purchaser will not assume liability for any merchandise shipped to it by Seller prior to receipt by Seller of a duly authorized PO. Each party shall be responsible for its own costs related to EDI systems and transmissions and shall maintain security procedures sufficient to ensure that EDI transactions are authorized against improper access.

### **3. LEGAL STATUS (SEP 08)**

The Army and Air Force Exchange Service (Exchange), including its activities, offices and individual Exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States (U.S.) Government. Exchange contracts are U.S. contracts; however, they do not obligate appropriated funds of the United States except for a judgment or a compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event the Exchange will reimburse the U.S. Government. Exchange procurement policy is established by applicable directives and instructions promulgated by the Department of Defense (DoD). The Federal Acquisition Regulation (FAR) does not apply to the Exchange.

### **4. AUTHORITY TO BIND (AUG 08)**

a. "Contracting Officer" means a person authorized by the Exchange Director/Chief Executive Officer (Dir/CEO) to execute and administer contracts, POs or other agreements on behalf of the Exchange. Only Contracting Officers may waive or change contract terms: impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contracts and issue final decisions on Supplier claims.

b. The Contracting Officer may authorize other Exchange and government officials to perform actions of an administrative nature, such as conducting inspections and audits: placing orders against existing contracts, forwarding request for contract changes to the Contracting Officer, collecting contract payments and processing routine documents. These officials are not Contracting Officers, as defined in [subparagraph 4a](#), above.

c. The Exchange has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the Contracting Officer. Claims based on such actions may be denied. Suppliers should refer questions concerning the authority of other Exchange or government officials to the Contracting Officer.

## **5. EXAMINATION OF RECORDS (SEP 08)**

This clause applies if the amount of the contract exceeds \$10,000. The Supplier agrees that the Contracting Officer or his duly authorized representative will have the right to examine and audit the books and records of the Supplier directly pertaining to the contract, during the period of the contract and until the expiration of three years after the final payment under the contract. The Supplier agrees to include this clause in all subcontracts that exceed \$10,000.

## **6. PROCUREMENT INTEGRITY (APR 12)**

a. By submission of an offer or performance of this contract, the offeror or Supplier certifies, with respect to this Exchange purchase action:

(1) That no discussion, offer or promise of future employment or business opportunity has been or will be made to the Exchange civilian or military personnel who participated personally and substantially in the purchase action.

(2) That no offer, promise or gift of any gratuity, entertainment, money or other thing of value has been or will be made to any Exchange civilian or military personnel or any other employee of the U.S. Government or member of their family or household.

(3) That no proprietary information of other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under the Exchange procedures.

(4) That no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the Supplier for the purpose of securing business.

b. Supplier certifies that no gratuities (entertainment, gifts, money, kickbacks or other things of value) were or will be solicited or accepted by the Supplier or any person representing the Supplier, from any sub-Supplier or person representing the sub-Supplier, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Supplier will report in writing, to the Director, Loss Prevention (LP), any possible violation of this clause when the Supplier has reasonable grounds to believe a violation may have occurred. The Supplier shall cooperate fully with any federal agency investigation of a possible violation of this clause.

d. For breach of any of these certifications, the Exchange may terminate this contract for default and/or deduct from amounts due under this or other contracts, or charge Supplier for, the total value of any contingent fee, gratuity or kickback or other loss to the Exchange arising out of the breach.

## **7. ADVERTISEMENTS (SEP 08)**

The Supplier will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the U.S., including the Exchange. All Supplier advertisements that refer to the Exchange or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the Exchange, the military exchange system or the U.S. Government.

## **8. INDEMNIFY AND HOLD HARMLESS (APR 12)**

The Supplier will indemnify and hold harmless and defend the Exchange and all other U.S. agencies and instrumentalities, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, international agreements or duly promulgated U.S. Government regulations, and all charges and expenses incident thereto which arise out of the following:

- a. The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by the Supplier.
- b. Loss, damage or injury alleged or established to have arisen out of or in connection with items or services provided by the Concessionaire, unless such loss, damage or injury was caused by or resulted solely from the acts or omissions of the Exchange, its agents, representatives or employees.
- c. Any loss, damage or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Concessionaire.
- d. The Exchange will give the Concessionaire notice and an opportunity to defend.

## **9. ASSIGNMENT (APR 12)**

The Assignment of Claims Acts, 31 United States Code (U.S.C.) 3727 and 41 U.S.C. 15, are not applicable to amounts due under Exchange contracts. The Supplier may not assign its rights or delegate its obligations under this contract, and the Exchange will neither consent to, nor recognize, any purported assignment. The Supplier may request permission from the Contracting Officer to have contract payments forwarded to a third party. The Supplier may request that the contract be negated.

## **10. TERMINATION BY NOTICE (JUN 96)**

Either party may terminate any and all performance under an individual PO, provided such notice is given not less than 30 calendar days before performance is required. Notice must be given in writing, to include electronic mail.

## **11. DISPUTES (DEC 07)**

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.

c. A claim by the contractor shall be made in writing and submitted to the contracting officer for a written decision. A claim by the Exchange against the contractor shall be made by a written decision by the contracting officer.

d. For contractor claims exceeding \$100,000, the contractor shall submit with the claim a signed certification that:

(1) The claim is made in good faith;

(2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief, and

(3) The amount requested accurately reflects the contract adjustment for which the contractor believes the Exchange is liable.

e. The claim must be executed by an individual with authority to bind the contractor.

f. The contracting officer will mail or otherwise furnish a written decision in response to a contractor claim, within the time periods specified by law. Such decision will be final and conclusive unless:

(1) Within 90 calendar days from the date of contractor's receipt of the final decision the contractor appeals the decision to the Armed Services Board of Contract Appeals (ASBCA), or

(2) Within 12 months from the date of contractor's receipt of the final decision the contractor brings an action in the United States Court of Federal Claims.

g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, contractor will proceed diligently with the performance of this contract and will comply with the contracting officer's decisions.

h. Submission of false claims to the Exchange is a violation of federal law and may result in civil and/or criminal penalties. If contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, contractor will pay the Exchange an amount equal to the unsupported part of the claim and all the Exchange's costs attributable to reviewing that part of the claim.

## **12. EQUAL EMPLOYMENT OPPORTUNITY (OCT 98)**

a. The Supplier agrees to comply with regulations of the Department of Labor (DOL) contained in Title 41, Code of Federal Regulations (C.F.R.), Chapter 60, which are incorporated by reference.

b. Annual purchases in the amount of \$10,000,000 or more will not be made unless the Supplier, and each first-tier Sub-Supplier which will receive a subcontract of \$10,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity (EEO) regulations of the DOL.

c. Additional information can be found on their website: [US Equal Employment Opportunity Commission](#).

d. EEO posters are available in English and Spanish at the following DOL website:

[Office of Federal Contract Compliance Programs](#)

**13. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (DEC 07)**

If the contract or the total of all orders issued during a calendar year equal or exceed \$100,000 and are not otherwise exempt, the Supplier agrees to comply with the regulations of the DOL, the Office of Federal Contract Compliance Program and the Affirmative Action clause, as set out in C.F.R., Title 41, Part 60-250, which are incorporated herein by reference.

**14. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES (DEC 09)**

If the contract or the total of all orders issued during a calendar year equals or exceeds \$10,000 and are not otherwise exempt, the Supplier agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-741, which are incorporated herein by reference.

**15. CONVICT LABOR (SEP 91)**

In connection with the performance of work under this contract, the Supplier agrees not to employ any person undergoing sentence of imprisonment, except as provided by Public Law 89-176, September 10, 1985 (18 U.S.C. 4082[c][2]) and Executive Order 11755, December 29, 1973.

**16. TAXES (MAY 89)**

The Supplier assumes complete and sole liability for all federal, state and local taxes applicable to the property, income and transactions of the Supplier. The prices charged the Exchange will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes that are not applicable:

- a. Because of the Exchange's legal status as an instrumentality of the U.S. Government;
- b. Because of the Exchange's immunity from direct state or local taxation;
- c. Because of federal, state or local tax exemptions for sales to the federal government; or
- d. Otherwise, such as items purchased for export. It will be the sole responsibility of the Supplier to explain, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes they have included in the prices charged. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

**17. ROBINSON-PATMAN (JUN 96)**

a. The Army and Air Force Exchange Service (Exchange) is a joint non-appropriated fund instrumentality (NAFI) of the Army and Air Force and is under the jurisdiction of the Chief of Staff of the Army and the Chief of Staff of the Air Force. The Exchange performs governmental functions, and partakes of all the immunities of the U.S. Government (Standard Oil Company of California v. Johnson, 316 U.S. 481, 62 S.Ct. 1168 [1942] and U.S. v. State Tax Commission of Mississippi, 421 U.S. 599, 95 S.Ct. 1872 [1975]).

b. The Robinson-Patman Act makes it unlawful to discriminate in price between different purchasers if it may substantially lessen competition or create a monopoly. Inquiries are often received after Suppliers are requested by the Exchange to offer prices favorable as or better than those offered to their other customers. The Act does not apply to sales to the Exchange or other elements of the U.S. Government. Suppliers may legally offer the Exchange prices more favorable than they offer to other customers. Neither the offer by the Supplier nor the acceptance by the Exchange is a violation of the Robinson-Patman Act (Champaign-Urbana News Agency, Inc. v. J.L. Cummins News Co., Inc., 632 F.2d 680 [7th Cir. 1980]).



## **18. TRADEMARKS (NOV 11)**

The Exchange is the holder of numerous trademarks including, but not limited to, Exchange™, PX® and BX™. All Exchange trademarks are designated by the ™ or the ® symbol, and are the exclusive property of the Exchange. Exchange trademarks may not be reproduced or used in any manner without the prior written consent of the Contracting Officer.

## **19. MAILING LISTS (AUG 92)**

Under no condition will the Supplier sell or otherwise disseminate name and address information on Exchange customers to other persons or firms. The Supplier agrees to restrict its use of such information to the performance of this contract. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

## **20. ENVIRONMENTAL PROTECTION (AUG 09)**

a. This clause will apply to any contract in excess of \$100,000, and indefinite quantity contracts estimated to exceed \$100,000 in one year; however, it will not apply to use of facilities located outside the United States.

b. Unless this contract is exempt, by acceptance of this contract, the Supplier (and, where appropriate, the Sub-Supplier) stipulates:

(1) Any facility to be used in the performance of any nonexempt contract or subcontract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities as of the date of contract award.

(2) Its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder.

(3) As a condition of award of contract, the Supplier shall promptly notify the Contracting Officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. EPA or delegate, indicating a facility to be used for the contract is under consideration to be listed on the EPA List of Violating Facilities.

(4) Its agreement to include the criteria and requirements in subparagraphs 40b(1) through 40b(4) in every nonexempt subcontract, and to take such actions the government may direct to enforce such provisions.

## **21. WARRANTY (DEC 91). The Supplier warrants that:**

a. The items furnished will be merchantable, fit and sufficient for the use intended. "Seconds," "imperfects" or "irregulars," as those terms are normally understood in the trade, will be accepted only when specifically required in the contract. This warranty will survive the Exchange's acceptance of the items and is in addition to other warranties of additional scope given to the Exchange by the Supplier. Any warranty given by the Supplier will be at least as good as the warranty offered to other agencies and instrumentalities of the United States. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

b. The items or services furnished are covered by the most favorable warranties the Supplier gives to any customer for such items or services, and the rights and remedies provided in the Supplier's warranties are in addition to and do not limit any rights afforded to the Exchange by any other clause of this contract.

c. Item warranty, packing and packaging will comply with all contract terms and all laws, rules and regulations applicable to delivery for domestic resale.

d. With respect to hazardous materials not purchased for subsequent resale, the Supplier agrees to comply with all applicable laws and regulations; and whether required by law or regulation or not, will submit a Material Safety Data Sheet (MSDS) as prescribed in Federal Standard No. 3138. The MSDS must be submitted, at least five days prior to delivery of the hazardous materials, to:

Exchange HQ, ATTN: LP  
P.O. Box 660202  
Dallas, TX 75266-0202

e. **SUPPLIER'S WARRANTY** - A copy of the Supplier's warranty for the contract item(s) is shown in the Supplier Warranty Exhibit. The Supplier will provide the Contracting Officer, upon request, a copy of applicable warranties. Nothing contained in the Supplier's warranty may supersede or restrict the warranty contained in the Exchange Warranty clause. The Exchange will accept Supplier's warranty provisions that are more favorable than the Exchange Warranty clause. The Supplier will furnish a copy of the warranty with each item.

i. **Heavy Metal Leaching:**

(1) The Supplier warrants that any product furnished under this contract that can reasonably be used to carry food or liquid for human-consumption and is made of a substance prone to heavy metal leaching (such as pewterware, earthenware, ceramicware, chinaware, ironware, lacquerware, bronzeware, brassware, leaded crystalware and coated/plated items with a heavy metal base) contains no leachable levels of metals dangerous to users. Maximum leachable levels and test methods are established by the U.S. Food and Drug Administration (FDA).

(2) The Exchange reserves the right to test the Supplier's products on an unannounced basis. If a heavy metal leaching failure is found, the Supplier agrees to reimburse the Exchange for all follow-up costs to sample test the remainder of the items ordered. This provision does not supersede other provisions allowed by the contract. The Supplier further warrants that products have been tested by either the FDA or a nationally recognized, independent test laboratory and found to be in compliance with the current FDA action levels and test methods. Test data will be furnished to the Exchange upon request by the Contracting Officer.

## 22. **PRICES (FEB 12)**

a. The Supplier warrants that during this contract, the net price to the Exchange (considering unit price, discounts, allowances, co-op advertising, rebates and other terms and conditions) for each item purchased will be as favorable as, or better than, the price the item is being sold by the Supplier to other customers under the same or similar conditions and in the same general geographical area pursuant to agreements made during the same period. In the event the Supplier subsequently agrees to sell the item to another customer at a lower price, the Supplier is obligated to promptly offer the lower price, in writing, to the Contracting Officer. If requested by the Contracting Officer, the Supplier will provide evidence (invoices, price lists, etc.) of recent sales to other customers to establish that the price meets the warranty.

b. In the event the Supplier subsequently extends special offers (e.g., vendor price reductions (VPRs), rebates, coupons) or other special terms to other customers, the Supplier is obligated to promptly extend them, under the same conditions and in writing, to the Contracting Officer. If the Contracting Officer accepts, the Supplier's obligation under [subparagraph 23a](#) and this subparagraph will be to provide a net price as favorable as the terms (as set forth in [subparagraph a](#) and herein) extended to other customers.

c. Price changes must be submitted in writing or sent electronically via EDI transaction 879. Notification, along with justification, must be given to the Contracting Officer 60 days prior to the requested price increase effective date. Granting of any price increase is at the sole discretion of the Contracting Officer. In the event the Supplier submits price protection pricing, the reductions will be taken on stock on-hand, on-order and in-transit.

d. The prices will remain firm for the contract period; however, written requests for adjustment may be considered when accompanied by documentation substantiating significant and unforeseen cost increases which occurred after the date of award. Granting of any price increase is at the sole discretion of the Contracting Officer.

e. The above warranty and obligations may be modified only by written contract amendment between the Supplier and the Contracting Officer, based upon written justification acceptable to the Contracting Officer. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

### **23. RETURNS (DEC 07)**

In any case where items or lots are to be returned (e.g., as defective/ nonconforming, late or under another clause), the contract value of the goods as of the date the items are returned will be charged back to the Supplier plus a 10% handling fees, and the following will apply:

a. The Contracting Officer will notify the Supplier of the Contracting Officer's decision to return the item/lot and request disposition instructions. Returns of items or lots with a cost price under \$250 may be made without prior notification. The Contracting Officer may request a refund of any payments and an advance to cover the costs of the Supplier's instructions (e.g., transportation and other related expenses). Title and risk of loss pass to the Supplier upon shipment from the Exchange facility.

b. The Exchange will deduct the cost of returned items, including any transportation costs, from any payment due the Supplier. If no money is due the vendor to offset the cost of the returns, a notice of the balance due will be sent to the vendor. The vendor must reimburse the Exchange within 30 days of the date of the notice. In the event the 30 days expire and the vendor's debt has not been paid by check or deducted from payments due the vendor, the Exchange will begin to accrue interest against the balance for each 30 days thereafter. The interest charge will be calculated using the balance due at the end of each 30-day period. The interest rate will be prime plus one percentage point.

c. Unless otherwise provided, the Exchange will retain earned discounts and allowances, such as, but not limited to: prompt payment discounts, anticipation, distribution allowances, bottom line discounts, special allowances, advertising allowances, and discounts in lieu of warranty and freight allowances. With the exception of freight allowances, all of these discounts or allowances may be credited the Supplier on a pro rata basis in conjunction with the return of defective/nonconforming items resulting from inspection and rejection of all or part of a "lot."

d. If the Supplier fails to provide instructions within ten days or such other reasonable time as the Contracting Officer allows, refuses to accept returned items or lots, or fails to provide a requested advance or refund of payments; the Contracting Officer may, at Contracting Officer option and in addition to other remedies specified elsewhere in the contract:

(1) Advertise the item/lot in one or more local newspapers or trade journals and sell the item/lot for the best price at the place where the item/lot is located; or

(2) Turn the item/lot over to a government property disposal office if there is no responsive offer from a responsible source to an advertisement ([subparagraph 23d\[1\]](#)) or if the Contracting Officer otherwise determines the item/lot is not readily saleable for other than scrap or salvage.

e. The Exchange will credit the Supplier for any surplus over the amount due from the Supplier for payment for the goods and incidental and consequential damages.

f. The Supplier must notify the Contracting Officer in writing within 90 days after a request for payment or a deduction from payments is made if returned merchandise is not received or is received in quantities or at prices different from the document supporting a deduction. Claims against the Exchange for non-receipt will not be honored after this 90-day period.

g. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

## **24. SUPPLIER LIABILITY (FEB 10)**

In addition to the liabilities specifically provided for in other clauses, the Supplier will be liable, as follows, in the event the Supplier fails to fully and timely perform in accordance with all contract provisions:

a. Incidental damages, including expenses reasonably incurred in the inspection, receipt, packing, rejection or screening of goods in lieu of rejection; care and custody of goods rightfully rejected, transportation and any other reasonable expense incident to the Supplier's failure to fully and timely perform in accordance with all contract provisions.

b. The Exchange may charge the Supplier for any costs incurred as a result of non-conformance. Non-conformance may include, but is not limited to:

(1) Failure to follow transportation routing guide, PO routing or Transportation Management System (TMS) routing, when applicable.

(2) No cross dock Advance Shipping Notification (ASN).

(3) Bad or incorrect Uniform Code Council (UCC) 128 label.

(4) Noncompliant pallets for foreign destinations.

(5) Cross dock overages.

(6) Incorrect or no case markings.

(7) Incomplete documentation.

(8) Failure to ship free-on-board (FOB) origin orders, or failure to deliver FOB destination orders on time.

(9) Merchandise not prepriced, if required.

(10) No universal product code (UPC)/incorrect UPC.

(11) UPC not readable.

(12) Incorrect bill of lading.

(13) POs not segregated.

(14) Item substitution not authorized.

(15) Quantity changes not authorized.

(16) Incorrect case pack received.

c. Vendors must have written confirmation of any changes to the POs (i.e., ship date changes, quantity changes, etc.). Verbal approvals are not valid and cannot be substantiated or cause for chargeback reversal. **Exchange Online suppliers refer also to Section 13 of the Supplier Requirements Agreement 03-01.**

d. The Supplier will not be liable for incidental damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Supplier, Sub-Suppliers and suppliers. Such causes may include acts of God, the public enemy or the Government (in either its sovereign or contractual capacity), to include: fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In such cases, the Supplier must provide prompt written notice to the Contracting Officer. The Contracting Officer may accept late, partial or substituted performance, or may terminate the contract in whole or in part, effective immediately upon receipt of written notice by the Supplier.

e. The Supplier will not subcontract the manufacturing process for the items supplied under the contract nor change the place of manufacture without the prior written consent of the Contracting Officer. Any Sub-Supplier, so approved and used in connection with the contract, is the agent of the Supplier and not the agent of the Exchange.

## **25. WITHHOLDING (DEC 07)**

The Exchange may withhold payment for:

a. Amounts due or creditable to the Exchange under this contract; e.g., returns, damages.

b. Amounts otherwise due or creditable to the Exchange. Any dispute will be processed under the Disputes clause unless it became due pursuant to another contract which included a Disputes clause.

c. In conjunction with any withholding, the Exchange will retain the benefit of all earned discounts and allowances, including: prompt payment discounts, anticipation, rebates, distribution allowance, discounts in lieu of warranty and freight allowances. Prompt payment discounts, anticipation and rebates will also be considered earned if they would have been earned except for the withholding.

## **26. NON-WAIVER OF DEFAULTS (JUN 94)**

Any failure by the Exchange at any time, or from time-to-time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof, and will not affect or impair such terms and conditions in any way or the Exchange's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

## **27. DEFAULTS (OCT 11)**

a. The Contracting Officer, by written notice of default, may terminate this contract in whole or in part for the Supplier's failure to:

(1) Ship/deliver conforming items or provide conforming services within the time specified.

(2) Timely comply with other contract requirements, including; e.g., the obligation to provide disposition instructions, repair or replace defective items.

(3) Make progress such that performance of the contract is endangered, provided the Supplier does not cure such failure after receipt of notice from the Contracting Officer specifying such failure.



degree of participation based on availability, designated themes of special events and the overall goals of the program. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

### **32. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS (DEC 13)**

By contracting with the Exchange, the Supplier warrants it has complied with all applicable laws and regulations governing the manufacture, sale, packing, shipment and delivery of the items provided. The Supplier certifies that it, its Sub-Suppliers and its suppliers have complied with applicable labor laws, including but not limited to the Fair Labor Standards Act (FLSA). The Supplier will notify the Sub-Supplier that the Exchange requires goods to be made in compliance with the FLSA and will provide Sub-Suppliers with information regarding FLSA requirements. If requested by the Contracting Officer, the vendor will promptly provide Sub-Supplier names and manufacturing sites. The vendor will have an effective monitoring program for it, its Sub-Suppliers and suppliers, and will display Wage and Hour Division posters in the workers' language, and other appropriate materials provided by the DOL through the Exchange at U.S. work sites, inviting workers to make inquiries about the FLSA. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

### **33. CHOICE OF LAW AND FORUM (OCT 11)**

This contract shall be construed and interpreted in accordance with the Federal laws of the United States of America.

### **34. PRIVACY ACT (APR 12)**

#### **a. The Supplier agrees to:**

(1) Comply with the Privacy Act of 1974 (the Act) and Department of Defense rules and regulations issued pursuant to the Act in the design, development or operation of any system of records on individuals that accomplish an agency function.

(2) Include this clause in all subcontracts which require the design, development or operation of a system of records.

b. In the event of violations of the Act, a civil action may be brought against the concession activity when the violation concerned the design, development or operation of a system of records on individuals that accomplish an Exchange function. Criminal penalties also apply to the concession activity if it is accomplishing an Exchange function. For the purposes of applying the criminal penalties section of the Act, the Supplier is considered to be an employee of the Exchange.

c. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use and dissemination of records.

d. "Record," as used in this clause, means any item, collection or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history and criminal or employment history, and that contains his/her name or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

e. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

f. The system of records under this contract is the system of records that is the result of information collected, compiled and/or utilized to build a customer database. Instruments used to collect information in written or electronic formats include, but are not limited to, application for services,



verification of credit rating, customer inquiries or comments, data for invoicing current customers, change of address notification, information used for marketing purposes, etc. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

g. Subcontracting and outsourcing customer data outside the Continental United States (OCONUS) is not allowed.

### 35. **VENDOR COMPLIANCE PROGRAM (NOV 09)**

All shipments are subject to non-compliance charges identified in the Exchange Vendor Performance Program. Descriptions of non-compliances and applicable charges can be found at the Exchange website: [Doing Business with the Exchange](#).

### 36. **GREEN CLAUSE (NOV 09)**

The Exchange encourages Suppliers/vendors to embrace, establish and promote environmentally “Green Initiatives.” We look to the Supplier to accomplish this by:

- a. Utilizing environmentally friendly products, where possible.
- b. Promoting energy-efficiency and water conservation, where possible.
- c. Eliminating/reducing the production or generation of hazardous waste and the need for special material processing (including special handling, storage, treatment and disposal), where possible.

### 37. **COMBATING TRAFFICKING IN PERSONS (NOV 09)**

a. **Definitions** – As used in this clause:

(1) **Coercion**

- Threats of serious harm to or physical restraint against any person.
- Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person.
- The abuse or threatened abuse of the legal process.
- Withholding any document (e.g., passport, visa, identification, etc.) that prevents or restricts the person from moving freely.

(2) **Commercial sex act** – Any sex act on account of which anything of value is given to or received by any person.

(3) **Debt bondage** – The status or condition of a debtor arising from a pledge by the debtor of his/her personal services, or of those of a person under his/her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt, or the length and nature of those services are not respectively limited and defined.

(4) **Employee** – An employee of the Supplier directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

(5) **Forced labor** – Knowingly providing or obtaining the labor or services of a person:

- By threats of serious harm to, or physical restraint against, that person or another person.



- By means of any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.
- By means of the abuse or threatened abuse of law or the legal process.

(6) **Involuntary servitude** includes a condition of servitude induced by means of:

- Any scheme, plan or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint.
- The abuse or threatened abuse of the legal process.

(7) **Severe forms of trafficking in persons:**

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age.
- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

(8) **Sex trafficking** – The recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act.

b. **Policy** – The U.S. Government and the Exchange have adopted a zero tolerance policy regarding trafficking in persons. Suppliers and Supplier employees shall not:

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract.
- (2) Procure commercial sex acts during the period of performance of the contract.
- (3) Use forced labor in the performance of the contract.

c. **Supplier requirements** – The Supplier shall:

- (1) Notify its employees of:
  - The U.S. Government's and the Exchange's zero tolerance policy described in [paragraph 38b](#) of this clause.
  - The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits or termination of employment.
- (2) Take appropriate action, up to and including termination, against employees or Sub-Suppliers that violate the policy in [paragraph 38b](#) of this clause.

d. **Notification** – The Supplier shall inform the Contracting Officer immediately of:

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Supplier employee, Sub-Supplier or Sub-Supplier employee has engaged in conduct that violates this policy.

(2) Any actions taken against Supplier employees, Sub-Suppliers or Sub-Supplier employees pursuant to this clause.

e. **Remedies** – In addition to other remedies available to the Exchange, the Supplier's failure to comply with the requirements of [paragraphs 38c, d or f](#) of this clause may result in:

(1) Requiring the Supplier to remove a Supplier employee or employees from the performance of the contract.

(2) Requiring the Supplier to terminate a subcontract.

(3) Suspension of contract or fee payments.

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Exchange determined Supplier non-compliance.

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract.

(6) Suspension or debarment.

f. **Subcontracts** – The Supplier shall include the substance of this clause, including this paragraph, in all subcontracts.

g. **Mitigating Factor** – The Contracting Officer may consider whether the Supplier had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons: [U.S. Department of State](#).

### **38. PERSONAL IDENTITY VERIFICATION OF SUPPLIER PERSONNEL (MAY 11)**

This clause is to provide guidance concerning compliance with Homeland Security Presidential Directive (HSPD) 12 and Policy for Common Identification Standard for Suppliers and Sub-Suppliers when contract performance requires routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system. As processes and procedures could change over time, go to [Shop My Exchange](#); click on "Doing Business with the Exchange;" under "Important Documents," click on "Authorization to Enter Military Installations" for the most up-to-date instructions. Questions should be directed to the Exchange HQ Director of Staff, Force Protection or your Contracting Officer.

a. After contract award and prior to performance on any Federal installation, the Supplier shall comply with the local installation's personal identity verification procedures identified by that installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Suppliers.

(1) If the Supplier employee is to work at only one site, the Exchange's Suppliers must follow local installation guidelines and directives concerning identification, access and security requirements. These guidelines may vary from one installation to another and it is the Supplier's responsibility to seek guidance concerning these issues from the Exchange Services Business Manager (SBM) or General Manager (GM).

(2) If the Supplier or their employees will access sensitive data, go to multiple DoD facilities or access to multiple non-DoD facilities on a recurring basis for a period of six months or more (CONUS or OCONUS), they must obtain a Common Access Card (CAC) and will be required to submit a clearance package to CS-FP, no less than 30 days in advance of needed access. Authorization must be received from CS-FP before Supplier can be issued a CAC card. CAC card will be issued after a thorough background check, which includes the completion of an FBI fingerprint check with favorable results and

submission of a National Agency Check with Inquiries (NACI) to the Office of Personnel Management (OPM) or a DoD determined equivalent investigation. You will then be directed to the nearest military installation where the card can be obtained.

b. The Supplier shall insert this clause in all subcontracts when the Sub-Supplier is required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system.

c. The Supplier is responsible for securing and returning to the issuing office all identification cards issued under these procedures:

(1) For all employees at the end of the contract; and

(2) For individual employees no longer employed or no longer assigned to perform the Exchange contract.

d. As a reminder, any costs associated with the clearance process are the responsibility of the Supplier.

### **39. CONSUMER PRODUCT SAFETY IMPROVEMENT ACT (CPSIA) FEDERAL REQUIREMENTS FOR DIRECT IMPORT SUPPLIERS (NOV 09)**

a. **Toys/children's products (for ages 12 and younger)** – Suppliers providing imported or private label products to the Exchange, where the Exchange is the importer of record, must have all finished products tested to CPSIA requirements by an accredited third party laboratory. The supplier is responsible for all product testing costs. To substantiate compliance, a valid lab report and a General Certificate of Conformity (GCC) must be submitted to the Exchange electronically via the Exchange web-based document repository, at least 10 days prior to the PO "ship date." Lab reports and GCCs must also be submitted to our shipping agent (Freight Forwarder) at the time of the actual shipment along with the required customs documentation. Please note that the supplier will be assessed/charged back any fees or costs incurred by the Exchange due to federal non-compliance issues. To register for the Exchange Document Repository, contact the HQ-QA Management Team at: [QAQuestions@aafes.com](mailto:QAQuestions@aafes.com) or call 214-312-3411.

b. **Other products federally regulated by the Consumer Product Safety Commission (CPSC)** – Suppliers providing imported or private label products to the Exchange (not including children's products), where the Exchange is the importer of record, must certify that all products meet CPSIA requirements via a reasonable testing program. To substantiate compliance, a GCC denoting the applicable ban and/or regulation must be submitted in the same manner as the document submission process described for children's products, above. Non-compliance issues will be the supplier's responsibility. A comprehensive list of regulated products can be found at the following website: <http://www.cpsc.gov/BUSINFO/reg1.html>.

### **40. CPSIA/FEDERAL REQUIREMENTS FOR OTHER SUPPLIERS (ALL PRODUCTS) (NOV 09)**

Federally regulated products provided to the Exchange by suppliers who fall into the following categories must also comply with CPSIA requirements: domestic and brand name suppliers, manufacturers, importers, brokers or resellers. To substantiate compliance, a high ranking company official must submit an annual conformity statement certifying items sold to the Exchange meet federal regulations, industry standards and Exchange requirements for safety, quality and performance. While the Exchange does not require lab reports to be submitted, those documents must be maintained by the supplier for three years and be made available to the Exchange upon request in case of a regulatory inquiry. Exchange certifications must be e-mailed to the HQ-QA Team at: [QAQuestions@aafes.com](mailto:QAQuestions@aafes.com).

#### **41. SOCIAL RESPONSIBILITY REQUIREMENTS FOR DIRECT IMPORT AND PRIVATE LABEL SUPPLIERS**

Suppliers providing direct import, where the Exchange is the importer of record, or private label products to the Exchange, must demonstrate that their factories and/or sub-contractors are in compliance with the Exchange's Social Responsibility and Labor Standards, before purchase orders for the suppliers can be generated in the Exchange. Refer to Section 2B of the [Supplier Requirements Agreement 03-01](#) for the details of the policy and requirements.

To substantiate the compliance, suppliers must provide the most recent factory social responsibility audit or certificate documents to the Exchange Quality Assurance (QA) office for review and approval. Contact the HQ-QA Management Team at [QAManagement@aafes.com](mailto:QAManagement@aafes.com) to submit social responsibility documents and/or questions. Subject to the approval, suppliers providing above products that are manufactured in low risk countries, or are national brands, are not required to submit factory social responsibility documents. (See [Appendix 1](#), Low Risk Countries)

#### **42. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS (MAY 13)**

The Supplier shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any other Federal department or agency, or upon receipt of a notice of proposed debarment from another Federal agency, during the performance of this contract.

#### **43. EXCHANGE PRIVATE LABEL (DEC 13)**

Items produced or furnished with packaging that bears the Exchange brand, logo, design or name will not be sold or released to another party. This prohibition includes, but is not limited to, quality control rejects, production overruns and overstocks. The items may be sold only if repackaged with the brand, logo, design or name removed.

#### **44. EXCHANGE SELL PRICE (DEC 13)**

Any reference to Exchange sell or retail prices is solely for Exchange information and internal purposes and does not constitute an agreement to sell any product at a particular price.

#### **45. LOGISTICAL SUPPORT (DEC 13)**

The Supplier's technical representatives, performing services under the contract who qualify under provisions of command directives, may be furnished logistical support, provided such support is consistent with the terms of international agreements entered into by the United States with the government of the nation concerned, and such support would not place the privileges and immunities of the United States in jeopardy. The provision and the extent of such support rests with the military commander concerned and not with the Exchange, and the contract in no way guarantees that such support will necessarily be provided.

#### **46. REPRESENTATIONS (NOV 15)**

The Supplier will not represent themselves to be agent or representative of the Exchange, another instrumentality or an agency of the United States.

The Exchange will not be bound by any terms on Supplier forms or letters unless such terms are specifically agreed to and incorporated in the PO or contract and signed by the Contracting Officer. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

#### **47. CHANGES (JUN 15)**

The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) drawings, designs, or specifications when the

supplies to be furnished are to be specially manufactured for the Exchange in accordance with such drawings, designs, or specifications; (b) time of delivery; (c) place of delivery; or (d) method of shipment or packing. If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly. Any claim by Supplier for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Supplier of the notification of change. Claims for constructive changes to the contract will not be considered.

#### **48. ITEM SUBSTITUTION AND VARIATION IN QUANTITY (JUN 15)**

No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the contracting officer.

#### **49. PERMITS AND LICENSES (JUN 15)**

Supplier shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Supplier and his employees rests with the Supplier.

#### **50. NON-EXCLUSIVE CONTRACT (JUN 15)**

Unless specified elsewhere, this contract does not establish Supplier as the sole supplier of goods or services to be provided on this military installation.

#### **51. DRUG-FREE WORKPLACE (JUN 15)**

To the extent applicable, the Supplier will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

#### **52. INVOICING**

Supplier will invoice the Exchange for the goods no later than one (1) year after the goods have been received by the Exchange; if the Supplier fails to do so, the Supplier will be deemed to have waived any right to receive the Exchange's payment for the goods. Supplier agrees that when it is qualified by the Exchange for EDI invoicing ON THE VICS 810 or UCS 880 standards, Supplier will no longer send any paper invoice to the Exchange. If Supplier does so, Supplier agrees that the Exchange may charge or debit Supplier US \$75 for each paper invoice for goods delivered to the Exchange distribution centers and US \$25 for each paper invoice for goods delivered directly to Exchange stores. Exchange Online suppliers refer also to Section 13 of the [Supplier Requirements Agreement 03-01](#).

#### **52. 2019 NDAA SECTION 889 REPRESENTATIONS**

By virtue of its execution of the Contract or the commencement of performance pursuant to the Contract, Contractor represents, warrants and covenants as follows:

a. Contractor, during performance of the Contract, will not provide telecommunications and video surveillance equipment or services prohibited in Section 889(a)(1)(A) of the 2019 NDAA (Section A);

b. During the performance of the Contract, Contractor, in accordance with Section 889(a)(1)(B) of the 2019 NDAA (Section B), does not and will not use the prohibited telecommunications and video surveillance equipment or services, or use any equipment, system, or service that uses prohibited telecommunications equipment or services as a substantial or essential component of any system;

c. If during the performance of the Contract, Contractor identifies Contractor's use of telecommunications and video surveillance equipment or services, prohibited in Section A and Section B as a substantial or essential component of any system, or as critical technology as part of any system, or Contractor is notified of such by a subcontractor at any tier, Contractor shall notify the Contracting Officer within three business (3) days.

## Appendix 1 Low Risk Countries

<b>A</b>
Andorra
Anguilla
Antigua And Barbuda
Aruba
Australia
Austria
<b>B</b>
Bahamas
Barbados
Belgium
Bermuda
Botswana
Brunei Darussalam
<b>C</b>
Canada
Cape Verde
Cayman Islands
Chile
Costa Rica
Croatia/Hrvatska
Cyprus
Czech Republic
<b>D</b>
Denmark
Dominica
<b>E</b>
Estonia
<b>F</b>
Finland
France
French Guiana

<b>G</b>
Germany
Greece
Greenland
Grenada
Guam
<b>H</b>
Hong Kong
Hungary
<b>I</b>
Iceland
Ireland
Israel
Italy
<b>J</b>
Japan
<b>K</b>
Korea, Republic of
<b>L</b>
Latvia
Liechtenstein
Lithuania
Luxembourg
<b>M</b>
Macau
Malta
Martinique
Mauritius
<b>N</b>
Netherlands Antilles
New Zealand
Norway

<b>P</b>
Poland
Portugal
Puerto Rico
<b>Q</b>
Qatar
<b>R</b>
Reunion
<b>S</b>
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Singapore
Slovakia, Slovak Republic
Slovenia
Spain
Sweden
Switzerland
<b>T</b>
Taiwan, Province of China
<b>U</b>
United Arab emirates
United States
United Kingdom
Uruguay
<b>V</b>
Virgin Islands, U.S.

## **Appendix 2**

# **Glossary of Acronyms**

ACRONYM	DEFINITION
<b>A</b>	
<b>ADP</b>	Automated Data Processing
<b>ASBCA</b>	Armed Services Board of Contract Appeals
<b>ASN</b>	Advance Shipping Notification
<b>C</b>	
<b>CAC</b>	Common Access Card
<b>CONUS</b>	Continental United States
<b>CPSC</b>	Consumer Product Safety Commission
<b>CPSIA</b>	Consumer Product Safety Improvement Act
<b>D</b>	
<b>Dir/CEO</b>	Director, Chief Executive Officer
<b>DoD</b>	Department of Defense
<b>DOL</b>	Department of Labor
<b>E</b>	
<b>EDI</b>	Electronic Data Interchange
<b>EEO</b>	Equal Employment Opportunity
<b>EPA</b>	Environmental Protection Agency
<b>F</b>	
<b>FAR</b>	Federal Acquisition Regulation
<b>FDA</b>	Food and Drug Administration
<b>FLSA</b>	Fair Labor Standard Act
<b>FOB</b>	Free-on-Board
<b>G</b>	
<b>GCC</b>	General Certificate of Conformity
<b>GM</b>	General Manager
<b>H</b>	
<b>HSPD</b>	Homeland Security Presidential Directive
<b>HQ</b>	Headquarters
<b>L</b>	
<b>LP</b>	Loss Prevention
<b>M</b>	
<b>MSDS</b>	Material Safety Data Sheet
<b>N</b>	
<b>NACI</b>	National Agency Check with Inquiries
<b>NAFI</b>	Non-Appropriated Fund Instrumentality
<b>O</b>	
<b>OCONUS</b>	Outside Continental United States
<b>OPM</b>	Office of Personnel Management
<b>P</b>	
<b>PO</b>	Purchase Order



ACRONYM	DEFINITION
<b>S</b>	
<b>SBM</b>	Service Business Manager
<b>T</b>	
<b>TMS</b>	Transportation Management System
<b>U</b>	
<b>UCC</b>	Universal Code Council
<b>UPC</b>	Universal Product Code
<b>U.S.</b>	United States
<b>U.S.C.</b>	Unites States Code
<b>V</b>	
<b>VPR</b>	Vendor Price Reduction