



Section D4: Terms and Conditions for Subcontracts Issued in support of Foreign Military Financed (FMF) Contracts subject to U.S Government Defense Security Cooperation Agency (DSCA) Guidelines for Foreign Military Financing of Direct Commercial Contracts.

Revised: **15 September 2017**

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This subcontract or Purchase Order is in support of a prime direct commercial contract with an international customer for supplies, articles or services to be procured through the U.S. Defense Security Cooperation Agency's (DSCA) process for Foreign Military Financing (FMF) of Direct Commercial Contracts (DCC).

The DSCA Guidelines and the corresponding Contractor's Certification and Agreement impose legal requirements that must be observed by Oshkosh's suppliers and subcontractors in the supply chain. Oshkosh Corporation and its affiliates ("Oshkosh") therefore require that you accept certain additional prime contract terms and conditions. These terms and conditions are included in specific clauses contained in the text below and requirements found in referenced documents as indicated. In many cases, the clauses included in this Section D4 retain the format and numbering convention as they exist in the prime contract. Although these clauses and requirements are flowed down to suppliers, much like the U.S. Federal Acquisition Regulation clauses contained in U.S. Government contracts, their content is unique to DCC contracts financed with DSCA Foreign Military Financing. Accordingly, all suppliers and subcontractors under DCC FMF programs should carefully note the contents of these clause and requirements.

The DSCA Guidelines, Contractor's Certification and Agreement, and Memo regarding Increased Threshold for Price Reviews/Proposals documents referenced in this Section D4 are available at:

<http://www.dscamilitary.com/programs/foreign-military-financing-direct-commercial-contracts-fmf-dcc>

The below terms and conditions are incorporated in their entirety into any Purchase Order designated with notes designating it in support of Foreign Military Financed contract. The referencing and reproduction, in this section of the Supplier Standards Guide, of the appropriate DSCA Guidelines and Contractor's Certification and Agreement clauses and requirements shall conclusively establish their applicability, as well as their incorporation into the Purchase Order, with the same force and effect as though set forth in the Purchase Order itself. In the event of a conflict between this Section D4 and Section D – Oshkosh Corporation Commercial Terms and Conditions, Section D4 shall prevail to the extent of any inconsistency.

The subcontractor named above ("Seller"), hereby acknowledges that the sum to be claimed as due and owing under the Purchase Order identified above is to be paid, in whole or in part, to Seller by Oshkosh Defense, LLC ("Buyer") from U.S. Government funds made available to the purchasing foreign government under the provisions of the Arms Export Control Act, as amended. In consideration of the receipt of such sum, Seller certifies to and agrees to the terms of Buyer's agreement with the U.S. Government, as represented by the Defense Security Cooperation Agency ("DSCA") (the "Prime Contract"), and to the following:

1. Agrees that authorized representatives of the Department of Defense and the Government of the United States shall have access to and the right to examine any of Seller's directly pertinent books, documents, papers, or other records involving transactions related to this Purchase Order for a period of three (3) years following receipt of the final payment made on the Prime Contract to which this Purchase Order relates.

2. Seller agrees to include in lower-tier subcontracts under this Purchase Order, a clause to the effect that authorized representatives of the Government of the United States shall have access to and the right to examine, for a period of three (3) years following the final payment under the Prime Contract, any of the lower-tiered subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to this Purchase Order.

The following subcontracts are exempted from this provision:

- a. Those orders equal to or less than \$100,000 in value.
- b. Those orders in implementation of a Prime Contract awarded to Buyer on a competitive lowest responsive bid or best bid/best value basis.
- c. Those orders for common hardware<sup>1</sup> and/or raw materials.<sup>2</sup>
- d. Those orders for commercially available U.S. off-the-shelf items.<sup>3</sup>
- e. Those orders issued and effective prior to date of the Prime Contract awarded to Buyer.

3. Agrees that it is Seller's responsibility on all subcontracts (except those exempted under Paragraph 2 above) to obtain written compliance from its first tier subcontractors to the certification signed

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1 Common hardware consists of commercially available, off-the-shelf items that do not require custom production or specific manufacture.

2 Raw materials are items that are in a natural state, not subject to manufacturing, refining, or finishing processes, and routinely stored without accountability or segregation based on origin.

3 Commercially available off-the-shelf item means a commercial item sold in substantial quantities in the commercial marketplace and offered to the U.S. Government without modification and in the same form in which it is sold in the commercial marketplace (see 41 USC 431). It does not include bulk cargo such as agricultural products and petroleum products.

by Buyer. Multi-year contracts must also meet this flow-down requirement. This includes cumulative contract amounts with all aggregate orders, modifications, and amendments under the Prime Contract.

4. The Seller is hereby notified that United States Government (USG) funds will be used to finance such subcontract, and that acceptance of the subcontract or order will constitute acknowledgment of such notification of USG financing. Further, the Seller agrees to include in the written terms and conditions of every subcontract or order a prominently displayed statement United States Government (USG) funds will be used to finance such subcontract, and that acceptance of the subcontract or order will constitute acknowledgment of such notification of USG financing.

5. Acceptance and implementation of the Purchase Order constitutes a declaration and agreement by the principal executive officers of Seller that no bribes, rebates, gifts, kickbacks, or gratuities to secure the Prime Contract or this Purchase Order, or for favorable treatment under such agreements, or for any other purpose relating to the Prime Contract or this Purchase Order have been or will be directly or indirectly offered or given to, or have been or will be arranged with officers, officials or employees of the Purchaser by Seller, its employees or agents. Seller Agrees to include in the written terms and conditions of every subcontract or order issued hereunder a prominently displayed statement as set forth in this Paragraph 5.

6. Understands that it may not recover any offset costs under direct commercial sales financed with nonrepayable FMF funds (U.S. funds provided to a foreign government or international organization on a nonrepayable basis).

**Certifies that \$ \_\_\_\_\_ is the amount of offset costs included in the price of this Purchase Order.**

7. Certifies that the recipient(s) and amount(s) of any commission, contingent fees, or similar compensation paid or to be paid in any way (to include payments to a bona fide employee or a bona fide commercial or selling agency), whether in cash or in kind, directly or indirectly related to the Prime Contract or Purchase Order are fully disclosed below. This requirement does not apply to a purchase that is for an amount less than the simplified acquisition threshold or to a purchase of commercial items that are sold at catalog or published prices.

**Recipient(s) of commissions, contingent fees, or compensation:**

**Name and Address:** \_\_\_\_\_

**Aggregate Amount Paid or to be Paid:<sup>4</sup>** \_\_\_\_\_

**Aggregate Amount Included in Purchase Order:<sup>5</sup>** \_\_\_\_\_

**Relationship to Seller:** \_\_\_\_\_

**Nationality:** \_\_\_\_\_

a. Certifies that the Purchase Order price does not include commissions, contingent fees, or similar compensation paid or promised to any person for the purpose of soliciting or securing the Prime Contract or the Purchase Order, unless such payments have been identified to and

<sup>4</sup> N/A is not a proper response to this question. Certifying subcontractor must write zero or the amount paid in this space.

<sup>5</sup> N/A is not a proper response to this question. Certifying subcontractor must write zero or the amount paid in this space.

approved in writing by Buyer prior to contract award for payment with repayable FMF credit or with Purchaser's national funds.

b. Certifies that any commissions, contingent fees, or similar compensation paid or promised by Seller to any person in relation to soliciting the Prime Contract or Purchase Order were not in violation of U.S. law or regulations.

c. Agrees to include within every subcontract or order under the Purchase Order (except those exempted under Paragraph 2) prominently displayed contract clause(s) requiring that the subcontractor provide the disclosures and certifications set forth in this paragraph 9.

8. Certifies that the full extent of the contractual relationship between Seller and Buyer, as it pertains to this Purchase Order, consists of the Purchase Order, the applicable Sections of the Supplier Standards Guide, and/or amendments to the Purchase Order identified on page one of this certification, and recognizes that Buyer makes no commitment to finance any additional or subsequent agreements related to this Purchase Order.

9. Agrees to provide a copy of any or all export licenses related to this Purchase Order, or alternatively, written documentation that certifies that an export license is not required.

10. Certifies that neither Seller nor any of its employees are suspended or debarred from conducting business with any agency of the U.S. Government and that export privileges are not suspended or revoked. Further agrees that no suspended or debarred firms will be used as a source of supplies or as a subcontractor for this Purchase Order.

11. For purposes of facilitating official U.S. Government inquiries to determine whether civil or criminal offenses may have been committed regarding the use, disbursement, or other disposition of funds made available under the U.S. Arms Export Control Act, to finance this Purchase Order, Buyer agrees to provide to any requesting authorized U.S. government official, documents that demonstrate the cost and price elements for the final Purchase Order price, including total amounts and breakdowns for all cost and price elements.

12. In addition to the agreement in Paragraphs 1 through 11 and for purposes of facilitating official U.S. Government inquiries to determine whether civil or criminal offenses may have been committed regarding the use, disbursement, or other disposition of funds made available under the U.S. Arms Export Control Act, to finance this Purchase Order, Seller agrees:

a. To identify and to consent to the disclosure of the following accounts to, and at the request of, the U.S. Department of Defense, the U.S. Department of Justice, or a U.S. Federal Grand Jury:

(1) Accounts wherever located in the name of such Seller or any related corporate entities; and

(2) Accounts located outside the United States in the name of the principal executive officers of such Seller (and any nominees) who have been personally and substantially involved in this Purchase Order, and

b. Acceptance and implementation of the subcontract constitutes agreement by the subcontractor to identify and to consent to the disclosure of the following accounts to, and at the request of, the U.S. Department of Defense, or the U.S. Department of Justice, or a U.S. Federal Grand Jury:

(1) Accounts wherever located in the name of such subcontractor or supplier; and

- (2) Accounts located outside the United States in the name of the principal executive officers of such subcontractor or supplier (and any nominees) who have been personally and substantially involved in this subcontract under the Purchase Order.

The term "consent to the disclosure" for purposes of sub-paragraphs (a) and (b) of this paragraph includes agreement to provide consent documents authorizing the disclosure of such information upon request.

**The following provision applies specifically to Purchase Orders issued under Prime Contract No. 4440838451 between Oshkosh Defense, LLC and the Government of Israel:**

ARTICLE 15  
SECURITY AND CONFIDENTIALITY  
[UNCLASSIFIED]

15.1 The program covered by this Contract is unclassified.

15.2 No publicity as to Buyer's identity or other information concerning this Contract shall be released by Seller or its subcontractors (including publication in internal or trade newsletters) without the prior written consent of the Director of Buyer's Security Department. Public disclosures by the U.S. Government do not constitute disclosures by the Seller (or its subcontractors).

15.3 Seller agrees not to disclose or present the System (or any part thereof or any data relating thereto) to any third party without the prior written consent of the Director of Buyer's Security Department. In the event Buyer's consent is given for a disclosure or presentation, all material to be disclosed/presented must be submitted to Buyer for approval (via U.S. mail) and shall not be disclosed/presented unless the written approval of the Director of Buyer's Security Department has been obtained.

15.4 The disclosure, transmittal, use, storage, distribution and disposition of all information, data, documentation and equipment produced or exchanged by either party under the terms of this Contract shall be in accordance with the procedure utilized by Seller for the protection of U.S. Government work (as per NISPOM DOD-5220.22M).

15.5 All of Seller's personnel who are to perform services under this Contract in Israel shall be subject to Israeli security requirements. Buyer supplied questionnaires shall be completed by Seller's personnel who are to perform services in Israel and submitted to the Director of Buyer's Security Department at least thirty (30) days prior to planned departure from the U.S.

15.6 Seller agrees to insert security provisions which conform to requirements of this Article 15 in all subcontracts awarded hereunder (domestic and foreign).

15.7 Seller shall institute security procedures at its plant to implement the above

security requirements upon the signing of this Contract and shall inform all employees and agents connected with the Contract of the provisions of this Article.

15.8 Buyer personnel shall be subject to the Visit Request procedures of the U.S. Government.

15.9 Notwithstanding any provisions in this Contract to the contrary, in no event shall Buyer deny Seller consent to disclose information relating to this Contract to U.S. Government, if such disclosure is required by U.S. law.

15.10 The parties' authorized representatives concerning all security matters relating to the performance of this Contract are as follows:

Buyer: Steven Chambers  
Oshkosh Defense, LLC  
[schambers@defense.oshkoshcorp.com](mailto:schambers@defense.oshkoshcorp.com)  
(920) 235-9150

Seller: As applicable