

SUPPLEMENT FOR CAPITAL EQUIPMENT AND TOOLING

Rev. October 2021

Buyer and Seller agree that the following terms and conditions are supplemental to and become by this reference part of the contract between them based on The Boeing Company General Provisions identified by Buyer to Seller (this “**Contract**”). Capitalized terms used but not defined herein have the meanings set forth in the General Provisions.

1. WARRANTY

- a. If Seller fails to proceed with reasonable promptness (which promptness will be determined by Buyer based on the relevant circumstances, in its sole discretion) to accomplish repair of any defect, Buyer may accomplish that repair, and Seller must reimburse Buyer for the cost of the repair either by a direct payment or a reduction in any amount otherwise payable under this Contract, at Buyer’s election.
- b. **For Tooling Only:** The warranty extends for a period of 2 years from Buyer’s final acceptance as specified in the General Provisions; this does not apply to procurements that require installation by Seller for which the warranty period is 1 year as set forth in the General Provisions in this Contract.

2. FACTORY RECEIPT

Seller must inspect and test the Goods at its factory to ensure that the Goods conform to the requirements of this Contract. Seller must give Buyer at least 30 days’ advance notice of the date (or dates) on which Seller’s inspection and tests will be performed. Reasonably in advance of the test dates, Seller must submit Seller’s testing procedures to Buyer for Buyer’s approval. Buyer has the right to conduct its own inspection of the Goods, and to observe any or all tests Seller performs. Successful completion of testing as specified in this Section 2, as determined by Buyer, must occur before shipment. Buyer’s determination under this Section 2 that Goods are ready to ship to Buyer does NOT constitute Final Acceptance of the Goods further to this Contract.

3. DATA RIGHTS AND SOFTWARE LICENSE

- a. Definitions.
 - i. “**Software**” means all software delivered under this Contract in the form required by the specification or statement of work, and includes, without limitation, computer programs incorporated, embedded or otherwise provided by Seller for use in or in connection with the Equipment.
 - ii. “**Equipment**” means tangible items (including equipment and tooling) delivered under this Contract that are not Software or Documentation.
 - iii. “**Machine Data**” means the data indicating status and measuring performance or effectiveness of the Equipment, either directly or indirectly, including but not limited to, torque time, speed, location, distance, starts and stops.
 - iv. “**Embodiment**” means all flow charts, logic diagrams, programmer’s notes, user’s manuals, listings, error codes, down time losses, alarm codes, speed losses, and such other material or diagnostics necessary for the use, upkeep, maintenance, and modification of all or any portion of the Software or Equipment.
 - v. “**Documentation**” means user manuals for the Goods; all addenda, corrections, and new editions of these materials; and any other materials in any form, that Seller customarily provides to end

users of the Goods. Documentation includes, without limitation, all of the published specifications for the Goods Buyer has identified to be provided by Seller.

- b. License. Seller grants to Buyer, for Buyer's internal purposes, an irrevocable, non-exclusive, worldwide, transferable, royalty-free, fully-paid license, under all applicable Intellectual Property, to the extent necessary to fully utilize the Equipment and to exercise all its rights under this Contract. Buyer's license rights include, without limitation, the following rights related to specific Goods:
 - i. The right to use, reproduce, and modify the Software;
 - ii. The right to use, reproduce, and modify the Documentation, including the right to edit and reformat any of the Documentation or convert any of the documentation into machine-readable form, whether for on-line or other kinds of electronic access to it;
 - iii. The right to use the Equipment, including the right to modify, enhance, maintain, repair, or reconstruct it and the right to make and use component parts of the Equipment;
 - iv. The right to make additional copies of the Software as reasonably necessary for backup or archival purposes, or for benchmark or other temporary testing; and
 - v. The right to transfer the Software to another party in connection with the surplus or disposal of the Goods.
- c. Buyer's Contractors. Buyer may allow a contractor, for the benefit of Buyer, to exercise any or all of the rights granted to Buyer under this Contract so long as Buyer takes reasonable measures to protect information that Seller has pre-identified to Buyer as Seller's Proprietary Information and Materials, and that is included in the disclosure to the contractor. Buyer's obligation to take reasonable measures per this subsection c will be satisfied by its exercising the same degree of care it uses to protect its own information of like kind and importance.
- d. Source Code License. Any source code delivered must include an Embodiment of the source code. In addition to Buyer's license to any source code delivered as part of the Software under this Contract, Seller grants to Buyer, for Buyer's internal purposes, a vested, fully paid, irrevocable license in the source code of all executable Software delivered under this Contract, the exercise of which is contingent on Seller's failure to support the Goods for whatever reason.
- e. Assignment. Buyer may assign the licenses to an assignee of this Contract, and/or to a purchaser of the Equipment, without Seller's consent.
- f. Right to Machine Data. All Machine Data obtained or collected is Buyer's Proprietary Information and Materials, and Seller must not restrict or limit Buyer's access to it. Seller must provide all such Machine Data or Embodiment, including any analysis or interpretation, at no additional charge or expense to Buyer. Seller has no right to use Machine Data or Embodiment, and must provide, upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, all Machine Data Embodiment, and all materials derived therefrom, to Buyer.

4. MILESTONE PAYMENTS

If Buyer makes or agrees to make any milestone payments under this Contract in advance of final acceptance of the Goods, the following provisions shall apply:

- a. Ownership. Upon the initial milestone payment, Buyer shall become and thereafter be deemed to be the owner of, the following whether then existing or thereafter arising: (i) all materials, parts and other goods purchased under this Contract that are to be incorporated into title in the Goods,

(ii) all Goods, intellectual property and other general intangibles developed or created in part or in full under this Contract or identified to this Contract, and (iii) all consumable supplies purchased primarily for Seller's use in the performance of this Contract (the property described in this item (a) is hereinafter referred to as the "Boeing Property"). Such passage of ownership of the Boeing Property to Buyer shall (a) not constitute acceptance under this Contract by Buyer of the Boeing Property, (b) extend the warranty period set forth in this Contract and (c) not relieve Seller of its liability on any third-party contracts.

- b. Title and Risk of Loss. Notwithstanding Buyer's ownership of the Boeing Property, risk of loss or destruction of or damage to of the Goods (and any other Boeing Property) will remain with Seller until delivery to Buyer's facilities, at which point Buyer will assume risk of loss. The parties explicitly agree that title to (i) materials or parts purchased under this Contract that are to be incorporated into the Goods, (ii) Goods developed or created in part or in full under this Contract, and (iii) consumable supplies that are purchased primarily for Seller's use in the performance of this Contract will pass to Buyer immediately. Such passage of title will not constitute Buyer's acceptance of such materials or of the Goods into which they are incorporated; nor will any Warranty Period commence with respect to such materials or Goods; and nor will Seller be relieved of its liability on any third-party contracts.
- c. All-Risk Insurance. Seller must insure the Goods against fire and other perils under a suitable all-risk policy in a form and with insurers satisfactory to Buyer, and such insurance shall provide for payment of loss thereunder to Buyer or its subsidiaries as their respective interests may appear. Seller shall cause its insurers to waive all rights of subrogation against Buyer or its subsidiaries as their respective directors, officers and employees for any loss or destruction of or damage to the Goods which is covered by insurance pursuant to this provision. Any deductibles and exclusions in coverage of such policies shall be assumed by and at the sole risk of Seller shall be paid by Seller. Seller must cause each insurer of Goods to provide to Buyer a certificate of insurance evidencing coverage required by this subsection and indicating that such insurance policies may not be canceled or materially altered without 30 days' prior written notice being provided to Buyer, and that the insurer will hold Buyer harmless from any claims for premiums in connection with such policies. Seller represents that it has not granted, and covenants that it will not grant, to any third party a security interest, whether or not subordinate, to the interest granted to Buyer in the Goods.
- d. Segregation. Any Boeing Property located at Seller's premises in which Buyer has acquired title must be conspicuously marked and tagged indicating ownership by Buyer; and, except as required for performance, be (i) segregated from all other materials and maintained in a separate area and (ii) restricted to access only by Buyer employees and authorized employees of Seller or its subcontractors who are specifically assigned to work in that area. Any failure by Seller to comply with the foregoing will not impair Buyer's title or ownership to the Boeing Property.
- e. Ordinary Course. Seller represents that Seller is in the business of selling the Goods and other Boeing Property, and is selling the Goods and other Boeing Property to Buyer in the ordinary course of Seller's business.
- f. Security Interest. It is the express intention of the parties that all Boeing Property at all times be deemed owned by Buyer. If notwithstanding such intention Seller is found to have an interest in any Boeing Property, it is the intention of the parties that this agreement constitute a security agreement and that Seller shall be deemed to have granted Buyer a first priority purchase money security interest in all of Seller's right, title and interest in and to such Boeing Property.