

## SAPA TRANSMISSION PROVISIONS FOR COTS GOODS AT A FIRM FIXED PRICE FOR PURCHASE ORDERS UNDER \$35,000, WITH U.S. DOMESTIC COMPANIES ONLY

### 1. DEFINITIONS

- **SAPA Transmission (SAPA)** is the entity specified on the Purchase Order (PO).
- **Contract** means together, in the following order of precedence: (1) PO and mandatory flow down clauses included in any attached U.S. Government Flow Down Exhibit(s), (2) these Terms and Conditions, and (3) any other incorporated, attached, or referenced exhibit, or other document.
- **Seller** is the independent contractor specified on the PO that is contracting with SAPA.
- **Work** means all deliverables, materials, and related labor necessary under the Contract.
- **Party** means SAPA or Seller.
- **Parties** means SAPA and Seller.
- **Authorized Representatives (AR)** means the Parties' authorized representatives specified on the PO.
- **Customer(s)** means any higher tier contractor and/or the U.S. Government

### 2. ACCEPTANCE

Seller's acknowledgment, commencement of performance, or acceptance of any payment shall constitute Seller's unqualified acceptance of the Contract.

### 3. WARRANTY OF WORK

3.1 Seller represents, warrants and agrees that:

- The Work is new and not used or aged unless so specified on the PO.
- The Work strictly complies with the requirements of the Contract, including all specifications set forth or referenced in any PO. The seller will timely notify SAPA of changes to the manufacturing process or location, supply base, or other changes that affects compliance of the Work.
- The Work is free from defects in design, material, manufacture, and workmanship.
- The Work is free from liens, licenses, claims, and encumbrances.
- The Work is performed by qualified personnel, with diligence, and in accordance with applicable industry quality standards.
- The Work is a COTS item as defined by FAR 2.101 ([www.acquisition.gov/far/2.101](http://www.acquisition.gov/far/2.101))
- The Work strictly complies with all laws applicable to the Work.
- The Work does not infringe, violate or misappropriate the rights of any third party.
- The Work does not include any open-source software or any code governed by an open-source software license.
- The Work is free from any unauthorized chemical substance pursuant to the Toxic Substances Control Act.
- The Work is free of any asbestos mineral fibers.
- The Work is free of any known conflict minerals as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

3.2 The warranties above shall begin upon SAPA' delivery of the Work to SAPA Customer(s) and shall extend for a period of one year.

3.3 All warranties shall run to the benefit of SAPA, its successors, and Customer(s).

3.4 If the Work contains any manufacturers or commercial warranties, Seller hereby grants and assigns such warranties to SAPA.

3.5 If Seller delivers nonconforming Work, or a non-conformity appears within the warranty period, SAPA shall return the nonconforming Work to Seller, and Seller shall reimburse SAPA for such shipping costs and, at SAPA' direction, promptly repair, replace, re-perform and deliver the Work at no cost to SAPA. If repair, replacement or re-performance of Work is not available to meet SAPA' schedule, SAPA may elect to repair or have a third party repair the Work at Seller's expense or procure substitute Work from a third party at Seller's expense.

3.6 Seller shall not re-tender rejected Work (or Work returned from another Seller customer) without disclosing in writing the corrective action taken and receiving written approval from SAPA to deliver the Work.

3.7 If the deliverable under this Contract is or contains Electronic Parts, the Counterfeit Electronic Parts Exhibit shall apply to this Contract.

3.8 Seller shall flow down the requirements of Section 3 of this Contract, including any applicable Exhibits, to all subcontractors supporting the Contract, and require that all subcontractors supporting the contract incorporate such requirements in all lower tier subcontracts. Breach of this Section 3 is a material breach of the Contract and Seller shall notify SAPA immediately upon becoming aware of any possible breach.

### 4. DELIVERY/TIMELY PERFORMANCE

4.1 Delivery and Risk of Loss is Delivery at Place (DAP) Destination. Seller shall pack all Work and include in all shipments any applicable Safety Data Sheets (SDSs) and a complete packing list that specifies the SAPA' Contract number and the date of shipment.

4.2 Seller's timely performance is a critical element of the Contract and time is of the essence. Seller shall notify Buyer of any delay, provide a written recovery schedule, and expedite shipping at Seller's expense. Seller shall not deliver Work early, unless authorized in writing by SAPA' AR.

### 5. PRICES/PAYMENT

5.1 Seller shall be responsible for, and Seller's prices shall be inclusive of, all applicable federal, state, local, and international taxes, duties, tariffs, licenses, export/import authorizations, permits, and similar fees imposed by any government; such charges shall be identified on Seller's invoice.



5.2 SAPA shall pay Seller using electronic funds transfer within 30 days of the receipt of Seller's proper invoice, or receipt of the Work (whichever is later). SAPA has the right to offset any amount or reduce overpayments or amounts not properly payable to Seller.

5.3 Seller shall provide a W-9 if requested by SAPA.

## 6. CONFIDENTIALITY

6.1 Seller shall protect and keep confidential SAPA' proprietary information, including but not limited to specifications, drawings, computer programs, designs, and other technical information which SAPA protects from public disclosure. SAPA' advance written consent is required prior to Seller's disclosure, public release, or any comment on SAPA' proprietary information, the Contract or its existence generally, or the contents of any terms and conditions in the Contract. The terms of the Contract does not alter any valid nondisclosure or proprietary information agreement between the Parties, which shall apply to any exchange of proprietary or confidential information made under the Contract.

6.2 Seller shall not communicate with SAPA' Customer with respect to the Contract, unless, and to the extent, required by law or as specifically directed by SAPA.

## 7. COMPLIANCE / REPRESENTATIONS

7.1 Seller shall comply with all laws applicable to its performance of the Contract.

7.2 In addition to the above, Seller represents, warrants and agrees that:

- Seller and Work complies with all applicable laws worldwide preventing slavery and human trafficking.
- Seller complies with all United States export control laws and regulations applicable to the Work and performance of the Contract, SAPA' or its Customer's export-controlled data. Seller shall identify any Work that is subject to U.S. export regulations and provide SAPA with the country of origin of the Work, the export classification of Work, and notice of any classification change.
- Seller shall not provide SAPA, and/or use in support of SAPA, any covered telecommunications equipment or services prohibited by FAR 52.204-25.
- Seller complies with the equal employment opportunity requirements of Title 41 of the Code of Federal Regulations (C.F.R.) and the employee notice requirements of Title 29 of the C.F.R.
- Seller has adequate controls in place to protect against Procurement Integrity Act violations. Seller's officers, directors, employees, agents, contractors, lower-tier subcontractors, or other related entities shall not provide SAPA with any information in violation of the Act.
- Upon SAPA' request, Seller shall complete the Cyber Security Supplier Questionnaire ("CSP") and comply with any responses or agreed actions at its own expense. Seller shall employ appropriate tools and practices to protect SAPA' data and shall advise SAPA within 72 hours of a cyber-attack in which SAPA' data may have been compromised.
- Seller shall be bound by the terms of the following documents if attached: (1) U.S. Government FAR/DFARS Flow Down Exhibit(s), (2) Counterfeit Parts Exhibit, (3) Furnished/Acquired/Fabricated Property Exhibit, (4) Cloud Security Exhibit and/or (5) Ship Repair, Inc. Addendum.

## 8. COUNTERFEIT

8.1 The following definitions apply to this clause:

"Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

8.2 The Seller represents and warrants that only new and authentic materials, and or materials are used in products required to be delivered to SAPA Transmission and that the Work delivered contains no Counterfeit Parts.

8.3 The Seller shall only purchase products to be delivered or incorporated as Work to SAPA directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain, no other material, materiel, part, or component other than a new and authentic part shall be used. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) Seller obtains the advance written approval of SAPA.

8.4 Seller shall maintain counterfeit risk mitigation processes in accordance with AS5553 and/or AS6174 as a minimum in addition to industry recognized standards and with any other specific requirements identified in this Contract.

8.5 The seller must make available to SAPA Transmission upon request OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM.

8.6 Seller shall immediately notify SAPA with the pertinent facts if Seller becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by SAPA, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. The seller, at its expense, shall provide reasonable cooperation to SAPA in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.

8.7 If the Seller is providing electronic components/devices only, the following Certification of Origin of Product applies: Acceptance of this Contract constitutes confirmation by the Seller that it is the OEM/OCM, or a franchised or authorized distributor of the OEM/OCM for the product herein procured.

8.8 This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flow down (FAR/DFARS), or other provision included in this Contract addressing the authenticity of Work.

8.9 In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs



relating to the removal and replacement of Counterfeit Work, including without limitation SAPA's costs of removing Counterfeit Work, of installing replacement Work, Rework costs, Corrective Action process's and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been replaced. The remedies contained in this paragraph are in addition to any remedies SAPA may have at law, equity or under other provisions of this Contract.

8.10 The Seller shall flow the requirements of this Exhibit to its subcontractors and suppliers at any tier for the performance of this Contract. Seller shall notify SAPA Transmission as soon as possible but not later than 7 days of discovery of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to SAPA, or acquired for this Contract whether or not it was delivered to SAPA.

## 9. INTELLECTUAL PROPERTY

8.1 To the maximum extent under law, SAPA maintains all rights, title, and interest in and to all intellectual property and proprietary information not expressly licensed herein. To the extent SAPA' intellectual property is shared with Seller for the purpose of the Work, SAPA grants Seller a limited, revocable, non-sublicensable, paid-up, royalty-free license to use the intellectual property for the sole purpose of performing the Contract.

8.2 Seller grants SAPA a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license to enable SAPA to use any intellectual property incorporated into or read upon the Work, to the extent necessary for SAPA to sell, offer for sale, or use the Work.

8.3 If an injunction is obtained against SAPA' use of the Work as a result of infringement, violation, or misappropriation of the intellectual property of any third party, in addition to all other remedies available, Seller shall procure for SAPA and SAPA' Customer the right to continue using the Work or replace or modify the Work so it becomes non-infringing.

## 10. LIABILITY/INDEMNIFICATION

9.1 Seller shall be liable for all of SAPA' losses, including but not limited to costs, penalties, damages, liabilities, fees, and expenses arising out of or related to Seller's (including its directors, officers, employees, suppliers and subcontractors at any tier) Work and performance of the Contract (Losses).

9.2 Seller's liability for Losses shall be capped at three times the value of any PO that includes the Work related to which the liability arose, except that no cap shall apply to Seller's liability resulting from Seller's violation of law, Seller's infringement, violation or misappropriation of the rights of any third party, a security breach of Seller resulting in SAPA' data being compromised, Seller's provision of counterfeit or inauthentic Work, Seller's provision of Work containing malicious technology, or Third Party Claims (defined below) arising out of or related to the Contract. Seller shall indemnify SAPA, its directors, officers, employees, and agents from and against any and all Losses, resulting from claims, causes of action, settlements and/or litigations (Third Party Claims), regardless of cause, arising out of or related to the Contract. SAPA' rights and remedies in the Contract are cumulative and in addition to any other rights and remedies in law or equity.

9.3 SAPA shall have no liability for any matter arising under or related to the Contract, other than for breach of its payment obligations. In no event shall SAPA, its employees, agents or representatives be liable for any special, incidental, indirect, punitive, or consequential damages of any kind, or any lost or anticipated profits or unabsorbed indirect costs or overhead, whether such remedy is sought in contract, tort, or otherwise.

## 11. INSURANCE/ENTRY ONTO PREMISES

10.1 Seller shall maintain (and require its subcontractors at any tier to maintain) customary insurance. In the event that Seller, its employees, agents, or subcontractors (at any tier) enter the site(s) of SAPA or SAPA' Customer for any reason in connection with the Contract, Seller and its subcontractors (at any tier) shall procure and maintain worker's compensation.

10.2 All insurance maintained hereunder shall be considered primary and exclusive. All Seller's personnel, agents or subcontractors that enter a SAPA' or SAPA' Customer's premise shall comply with the required security protocols and on-premises rules.

## 12. DISPUTES

11.1 The Contract, and all actions (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to the Contract, shall be governed by and enforced in accordance with the laws of the State of Michigan (excluding any conflict of law provisions); except that any provision in the Contract that is incorporated in full text, incorporated by reference or is substantially based on the FAR, Defense Federal Acquisition Regulation Supplement (DFARS), or any other agency regulation that implements or supplements the FAR, shall be construed according to the U.S. federal common law of government contracts.

11.2 The Parties agree to timely notify each other of any claim or dispute arising under the Contract. Seller shall continue working diligently during any dispute.

11.3 The Parties waive all objection and right to contest the subject matter jurisdiction, personal jurisdiction, and/or venue of a Michigan state or federal court, to decide any claims brought by any party in connection with or arising under the contract. The Parties waive any right to trial by jury.

## 13. TERM AND TERMINATION

12.1 This Agreement commences from Contract acceptance through final payment, unless earlier terminated under this Section.

12.2 SAPA may terminate the Contract in accordance with applicable termination rights specified in the U.S. Government Flow Down Exhibit(s), if attached.

12.3 The Parties may terminate the Contract upon mutual written agreement.

12.4 Upon a Seller's material breach of the Contract, SAPA may terminate the Contract with 5 days' written notice. SAPA may, in its sole discretion, elect to accept (a) completed Work at the Contract price, (b) partially completed Work at a reasonable price, or (c) Work in progress at actual cost.

## 14. GENERAL CLAUSES

13.1 Assignment: SAPA may freely assign the Contract. Seller shall not assign rights or delegate duties under the Contract without advance written consent of SAPA. A change of control of Seller, by operation of law or otherwise, shall constitute an impermissible assignment.

13.2 Entire Agreement: The Contract is the entire agreement of the Parties and supersedes all other discussions or agreements on this subject. SAPA expressly rejects any additional or different terms proposed by Seller. Amendments or changes to the Contract shall be in writing and must reference the Contract and be signed by



each Party's AR. Nothing in these Terms and Conditions amends or supersedes any master agreement, long term supply agreement, proprietary information agreement or indemnity agreement between the Parties.

13.3 Notices: All notices must be sent to the applicable Party's AR. Email constitutes notice only if receipt is confirmed by a reply email (not an automatic reply).

13.4 Records: Seller shall retain all records related to the Contract for 5 years from the date of final payment receipt (or such longer period as required by law). Seller shall provide SAPA and its Customer(s) (if authorized by SAPA) reasonable access to such records.

13.5 Severability: In the event any provision or clause of the Contract conflicts with governing law or is held invalid by a court of competent jurisdiction, the provision or clause shall be deemed to be modified to reflect as nearly as possible the Parties' intent. The remainder of the Contract shall remain in full force and effect.

13.6 Survival: If the Contract expires or is terminated, Seller shall not be relieved of the obligations contained in (1) U.S. Government Flow Downs; (2) the following Sections: Warranty of Work, Confidentiality, Compliance/Representations, Intellectual Property, Liability/Indemnification, Insurance, Governing Law/Disputes, and General Clauses; (3) any obligation arising out of termination or expiration; and (4) any Exhibits attached hereto.

13.7 Third Parties: The Contract does not create any right, obligation or recourse against any third party (including any SAPA' Customer).

13.8 Waiver: SAPA' failure to enforce any provision(s) of the Contract shall not be construed as a waiver of the requirement or a waiver of the right to enforce each and every such provision(s).



