



**DOC 2S INT
SUPPLEMENT FOR INTERNATIONAL PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S.
GOVERNMENT PRIME CONTRACT**

In a Contract between ULA and an international vendor/supplier/service provider for Commercial Items bought under a U.S. Government Prime Contract, Doc 2 shall apply, with the following additions, modifications, and substitutions as identified by clause below. This document shall have precedence over ULA Doc 2 with regard to the clauses, or portions thereof, cited herein.

SECTION I: GENERAL PROVISIONS

DEFINITIONS

Add the following definition:

“Government” means the Government of the United States of America or any department or agency thereof.

1. ACCEPTANCE, MERGER AND SEVERABILITY

The Title of the clause in Doc 2, “ACCEPTANCE, MERGER, AND SEVERABILITY” shall be amended to read “ACCEPTANCE, LANGUAGE, MERGER, AND SEVERABILITY”

Add paragraph (g), as follows:

(g) All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures.

3. DISPUTES, GOVERNING LAW AND LEGAL NOTIFICATION

Substitute the following clause for the clause in Doc 2 titled “Disputes, Governing Law, and Legal Notification.”

3. DISPUTES AND ARBITRATION, GOVERNING LAW AND LEGAL NOTIFICATION

3A: DISPUTES AND ARBITRATION

(a) **Continuation of Performance.** CONTRACTOR will perform the Work as set forth in this Contract. If ULA requires CONTRACTOR to perform work that CONTRACTOR does not believe this Contract requires it to perform (hereafter referred to as “Disputed Work”), then CONTRACTOR will perform the Disputed Work and will start the dispute resolution procedure in accordance with this clause, to determine whether CONTRACTOR should be paid additional money for this work.

(b) **Management Consultation.** Any dispute between the parties will first be referred to each party’s senior management for resolution. The senior managers will meet and confer with respect to the subject under dispute.

(c) **Arbitration.** Any dispute arising out of or relating to this Contract, or any breach of this Contract, that the parties have been unable to resolve by management consultation as provided in paragraph (b), will be resolved exclusively by arbitration. The arbitration will be in accordance with the rules prepared by the American Arbitration Association except as specifically modified in this Contract.

(i) **Agreement to Arbitrate.** The award of the arbitrator shall be final and binding upon the parties.

(ii) **Governing Rules.** The arbitration shall be in accordance with the rules of commercial arbitration of the American Arbitration Association, except that in the event of any conflict between those rules and the arbitration provisions of this Contract, the provisions of this Contract shall govern.

(iii) **Appointment of Arbitrator.** The number of the arbitrators shall be one. Upon application of one of the parties to this Contract, the American Arbitration Association in Denver, Colorado shall appoint the arbitrator. The arbitration, including the making of the award, shall take place in Denver, Colorado.

(iv) **Commencement of Arbitration.** Either party may commence an arbitration by applying to the American Arbitration Association office in Denver for appointment of an arbitrator. The application for appointment will identify the other party to this Contract by name and address. A copy of the application for appointment of an arbitrator will be sent to the other party.

(v) **Issues in Dispute.** The application for appointment will specify the issues that are in dispute, the position of the initiating party as to those issues, the identity of the parties with whom the initiating party is in dispute, and will state the remedy that the initiating party seeks.

(vi) **Award.** The arbitrator is authorized to award damages to the prevailing party and to order specific performance of any contractual obligation that he finds a party is failing to perform. The arbitrator will make the award within thirty (30) business days from the date established for final submittal of oral or written statements and documents to the arbitrators. An award will be in writing, will state the precise reasons for the award and will specify the remedy or relief granted, if any.

(vii) **Enforcement.** An award by the arbitrator will be final and conclusive as to the issue or issues that were the subject of the arbitration. The parties to this Contract exclude any right of application or appeal to any court and, in particular, in connection with any questions of jurisdiction or question of law arising in the arbitration or out of the award. The award will be enforceable in any court having jurisdiction over the party against whom enforcement is sought.

(viii) **Language.** The parties will use English as the single language for the arbitration proceeding. Simultaneous interpretation shall be allowed.

(ix) **Interim or Provisional Remedies.** Any party commencing an arbitration under this Contract may seek from any court of competent jurisdiction a temporary remedy (such as an injunction or order to refrain from taking certain action) that is needed to preserve assets or the rights of that party while the arbitration is being conducted. Once an arbitrator is appointed, the arbitrator may impose a temporary remedy, in addition to or to supplement any temporary remedy imposed by the court.

(x) **Attorneys' Fees and Expenses.** Each party shall bear its own costs, including attorneys' fees, related to any arbitration proceeding brought pursuant to this Contract.

3B. GOVERNING LAW AND LEGAL NOTIFICATION

(a) This Contract, and all claims relating to or arising out of this Contract, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed in accordance with the laws of the State of Colorado, excluding that State's choice-of-law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(b) Any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the United States Federal Government.

(c) CONTRACTOR agrees to provide ULA with prompt written notification of any legal action, subpoena, claim, notice, demand or other legal proceeding brought against CONTRACTOR relating to or arising out of the Work performed under this Contract.

8. EXPORT CONTROL

Substitute the following clause for the Doc 2 clause titled "EXPORT CONTROL"

8. EXPORT CONTROL

(a) Technical data, defense services, software and/or hardware furnished under or in connection with this Contract may be subject to U.S. export or import control laws and regulations, and may be subject to export or import laws and regulations of other countries. All Parties agree to comply with all such laws and regulations. The substance of this subparagraph shall be flowed down to Subcontractors.

(b) CONTRACTOR agrees to reasonably cooperate with ULA for assessments, audits and other fact-finding required to ensure compliance to U.S. export/import laws and regulations or as part of an investigation or corrective action related to a potential or actual violation of U.S. export/import laws and regulations. The CONTRACTOR will provide input for such activities in a timely and accurate manner. The substance of this subparagraph shall be flowed down to Subcontractors.

(c) Where applicable, CONTRACTOR as the Foreign Principal Party in Interest (FPPI) agrees to notify its designated U.S. freight forwarder in writing that ULA will submit its own Automated Export System (AES) authorizations. CONTRACTOR additionally agrees to direct its forwarder to furnish ULA a copy of the export bill of lading verifying that the AES authorization provided by ULA has been properly listed.

(d) Where the CONTRACTOR is a signatory or party under a ULA export agreement (e.g. TAA, MLA, WDA) or license, CONTRACTOR shall provide prompt notification to ULA in the event of changed circumstances including, but not limited to, change in name, address, ownership, organization restructure with another company, ineligibility in accordance with ITAR, part 126.13(a)(3), violation or potential violation of the ITAR, or the initiation or existence of a U.S. Government investigation, that could affect CONTRACTOR's performance under this Contract. The substance of this subparagraph shall be flowed down to any authorized Subcontractors as applicable.

(e) For imported, duty paid merchandise that ULA subsequently re-exports, ULA retains all duty-drawback rights. The CONTRACTOR agrees to support ULA in a timely manner by providing necessary documentation to claim duty drawbacks.

(f) Should an item imported directly from a foreign supplier be eligible for a free or reduced duty rate under a specific trade program such as NAFTA, Generalized System of Preferences-GSP, or other region/country specific free trade agreement, the CONTRACTOR agrees to provide and maintain documentation necessary to support such claims. ULA will provide information to the CONTRACTOR regarding any duty minimization opportunities.

(g) When CONTRACTOR is responsible for clearing the Work through United States Customs, CONTRACTOR will neither cause nor permit ULA's name to be shown as "Importer of Record" on any customs declaration form or other documentation.

(h) For any shipment arriving in the U.S. by ocean transport vessel, U.S. Customs & Border Protection (CBP) requires an Importer Security Filing (ISF) to be completed 24 hours PRIOR to vessel departure from the originating country. ULA will submit the Importer Security Filing, but must obtain certain data elements from the CONTRACTOR in order to accomplish this task. CONTRACTOR agrees to cooperate with ULA in order to meet this requirement. Failure to submit an ISF to CBP in a timely manner can subject ULA to fines and/or penalties. Under no circumstances should a shipment to ULA be made without advance coordination. CONTRACTOR shall not authorize release for shipment to ULA prior to receipt of ULA's written approval to ship, and provision of completed ULA-supplied compliance certification.

(i) CONTRACTOR will notify the Procurement Representative five (5) days in advance of any delivery of Work under this Contract so that the Procurement Representative can provide instructions as to the shipping and customs forms that will need to accompany the Work. CONTRACTOR agrees to provide the documentation that is required by ULA, completed in accordance with ULA's instructions. CONTRACTOR agrees to take all other action reasonably requested by ULA to expedite customs clearance in the United States for the Work.

(j) The CONTRACTOR agrees to provide timely and accurate reporting of fees and commissions paid related to Part 130 of the ITAR, when applicable. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(k) CONTRACTOR agrees to identify and obtain ULA approval prior to permitting dual/third country nationals to perform under this Contract, which includes all countries in which the foreign person has held or holds citizenship or permanent residency. For all Work on this Contract CONTRACTOR agrees to comply with U.S. export and import laws relating to dual/third country nationals, including the obtainment of State-mandated Non-Disclosure Agreements with such individuals, as applicable. The substance of this subparagraph shall be flowed down to Subcontractors.

(l) United States Customs and Border Protection's Customs Trade Partnership Against Terrorism (C-TPAT) is an initiative between business and government to protect global commerce from terrorism and increase the efficiencies of global transportation. The program calls for importers, carriers and brokers to establish policies to enhance their own security practices and those of their business partners involved in their supply chain. Such practices may include but are not limited to the following:

- 1) Procedural Security – Procedures in place to protect against unmanifested material being introduced in the supply chain.
- 2) Physical Security – Buildings constructed to resist intrusion, perimeter fences, locking devices, and adequate lighting.
- 3) Access Controls – Positive identification of all employees, visitors, and suppliers.
- 4) Personnel Security – Employment screening, background checks and application verifications.
- 5) Education and Training – Security awareness training and incentives for participation in security controls.

CONTRACTOR agrees to work with ULA and appropriate industry and governmental agencies, as necessary, to develop and implement policies and processes consistent with the C-TPAT initiative to ensure the safe and secure transport of Work under this Contract. CONTRACTOR should not make changes and/or modifications, billable to ULA, to current security systems and procedures without first obtaining ULA's concurrence.

(m) CONTRACTOR shall use export-controlled technical data and/or hardware only in support of Work in accordance with this Contract and within the constraints of any applicable U.S. export license or agreement. CONTRACTOR will not re-export or retransfer ULA-provided export-controlled hardware or data, including derived or extracted data, to a sub-tier supplier(s) or any other party without prior written approval from ULA. CONTRACTOR may have to obtain U.S. State Department-mandated Non-Disclosure Agreements, Non-Transfer and Use Certificates, or other required documentation before ULA can approve a retransfer. Upon re-export or retransfer approval, CONTRACTOR shall ensure ULA's export-controlled legends are maintained on all retransferred controlled data received from ULA, or derived from ULA data. This clause shall be flowed down to any authorized Subcontractors, as applicable.

(n) CONTRACTOR shall indemnify, defend and hold harmless ULA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, suppliers, or Subcontractors in relation to its export/import activities. Any limitation of liability in this Contract shall not apply to this clause.

9. FORCE MAJEURE

Add paragraph (c), to the Doc 2 clause titled "Force Majeure" as follows:

(c) Failure of the United States Government to issue any required export license, or withdrawal/termination of a required export license by the United States Government, shall relieve ULA of its obligations under this Contract.

16. PACKING AND SHIPMENT

Substitute the following paragraph for paragraph (c) in the Doc 2 clause titled "Packing and Shipment"

(c) Unless otherwise specified, delivery shall be FCA Free Carrier, in accordance with INCOTERMS 2010 Carrier and site of delivery for the Work shall be specified in the Contract.

29. GRATUITIES/KICKBACKS

Add paragraph (d), to the Doc 2 clause titled "Gratuities/Kickbacks" as follows:

(d) CONTRACTOR warrants that it is familiar with, and will comply in all respects with the Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§ 78dd-1, et seq.). CONTRACTOR further certifies that it has not and will not offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to a foreign official (as defined in the FCPA), to any foreign political party or official thereof or any candidate for foreign political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for the purposes of:

- (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or in the case of a foreign official, inducing him to do or omit to do any act in violation of that official's lawful duty; or
- (ii) inducing such foreign official, political party, party official, or candidate to use his or its influence with the foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist CONTRACTOR or ULA in obtaining or retaining business, or directing business to CONTRACTOR or ULA, or any other person; or
- (iii) securing any improper advantage.

CONTRACTOR agrees that if subsequent developments cause this certification to be no longer accurate or complete, CONTRACTOR will immediately notify ULA of such circumstances.

35. PAYMENTS, TAXES, AND DUTIES

Add paragraph (f), to the Doc 2 clause titled "Payment, Taxes, and Duties" as follows:

(f) The prices stated in the Contract are in United States dollars.

SECTION II: FAR FLOWDOWN PROVISIONS

The following FAR clauses, incorporated into Doc 2 (including any directions regarding applicability or other notes incorporated in that document), do not apply to this Contract unless Work under the Contract will be performed by CONTRACTOR or CONTRACTOR's Subcontractors in the United States or CONTRACTOR is recruiting employees in the United States to work on the Contract.

52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

52.222-26 EQUAL OPPORTUNITY (SEP 2016)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JULY 2014)

52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)

SECTION III: CERTIFICATIONS AND REPRESENTATIONS

The following Representations and Certifications incorporated into Doc 2 (including any directions regarding applicability or other notes incorporated in that document), do not apply to this Contract unless Work under the Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to work on the Contract.

(c) FAR 52.222-22 Previous Contracts and Compliance Reports.

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) and (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(d) FAR 52.222-25 Affirmative Action Compliance.

CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.