

Boeing Canada Operations Ltd.
CAPITAL EQUIPMENT SUPPLEMENT GPW4
(Addendum to General Provisions)

Buyer and Seller agree that the following terms and conditions are supplemental to and become part of the General Provisions (Fixed Price Contract) GPW1,.

1. WARRANTY PERIOD

- a. Seller's Warranties. The warranty set forth in clause 8 of the GPW1, entitled "Warranty" shall be for a period of twelve (12) months from final acceptance of the equipment which (hereinafter the "Equipment") or for the period set forth in Buyer's specification, whichever is longer.
- b. Remedy for Breach of Warranty. Buyer shall provide notice of any defect covered by the warranty. Promptly after receipt of such notice, Seller shall redesign and repair or replace any portion of the Equipment affected by a defect covered by the warranty at no cost to Buyer. Seller shall be responsible for the cost of reinstallation of any repaired or replaced Equipment. If Seller fails to proceed with reasonable promptness to accomplish repair of any defect, Buyer may accomplish such repair, and Seller shall reimburse Buyer for the cost of the repair by, at Buyer's election, a direct payment or a reduction in any amount otherwise payable under the Contract.

2. ACCEPTANCE

Seller shall inspect and test the Equipment at its factory to ensure that the Equipment conforms to the requirements of the Contract. Unless an alternative acceptance process, acceptance criteria and acceptance tests are included and described hereto;

In respect of the Equipment:

- a) The Equipment, or any portion thereof as the case may be, will be jointly tested by Seller and by individuals selected by Boeing in accordance with test plans and test scripts developed, for such period of times as is mutually agreed to by the Parties;
- b) the Seller will, in writing, notify Boeing when the Equipment, or any portion thereof as the case may be, is ready for acceptance testing in accordance with the developed test plans and test scripts;
- c) Boeing will have a minimum of ten (10) Business Days following the acceptance testing period mutually agreed to by the Parties to notify the Seller, of any deficiencies in respect of that Equipment, or component thereof, (as the case may be);
- d) the Seller will, within fifteen (15) Business Days (unless otherwise extended in writing by mutual agreement of Boeing and the Seller), remedy all such deficiencies and resubmit that Equipment or Equipment component (as the case may be) for re-testing by Boeing. Boeing will then have a reasonable period of time to re-test the Equipment and to notify the Seller whether the resubmitted Equipment is accepted.

- e) If, following the retesting of the Equipment or Equipment component (as the case may be) identified deficiencies are not corrected or new deficiencies are identified, Boeing may at its option, request the testing be repeated.

Final Acceptance will occur if and when the Acceptance Testing has been successfully completed, meaning that:

- i. the Equipment, or portion thereof as the case may be, meets all of the Equipment Requirements for the operation, functioning and performance of the Equipment; and
 - ii. all tests and criteria set forth in the test plans and tests scripts developed for that testing have been Successfully Passed.
- a) Final Acceptance of the Equipment or a portion thereof, as the case may be, will not be unreasonably withheld for deficiencies that may exist in the Equipment, provided such deficiencies do not in any way affect the functionality; or
 - b) accept the Equipment, or portion thereof as the case may be, that is deficient on an "as is" basis upon negotiating terms satisfactory to Boeing and the Seller, which terms will, at a minimum, include a reduction in the total amount payable by Boeing to the Sellers for that portion or
 - c) reject that portion of the Equipment, as the case may be, and either
 - i. require that the Seller, at its own cost, promptly replace or have a Third Party replace the deficiency with a product, whether that is a Seller developed product, or a product developed by an the Seller Affiliate or a Third Party, that meets or exceeds the Equipment Requirements.

If the Seller is unwilling or unable to replace the deficiency as aforesaid within a reasonable period of time, Boeing will be entitled, at the Seller's own cost to the value under the Contract, to promptly replace or have a Third Party replace the deficiency with another product that meets or exceeds the Equipment Requirements.
 - or
 - ii. declare the Seller to be in breach of this Agreement, in which case, in addition to any other rights and remedies that Boeing may have under this Agreement, Boeing has the right to reject the whole of the Equipment, , including any part or parts of the Equipment previously tested and accepted, and the Seller shall refund all monies paid by Boeing and the Seller shall have the right to remove, at its sole expense, the portions of the Equipment provided by the Seller.

If the equipment provided under this Agreement fails the Final Acceptance Plan in the sole opinion of Boeing, the Contractor agrees that damage will be sustained by Boeing and the sum set forth as liquidated damages is an estimate of the cost to Boeing for engineering, inspection, supervision, administration, continuing maintenance, program loss/delays, that will accrue after the specified time limit. It is agreed by the parties that a sum calculated at the rate of .5% of the Purchase Price for each week between the Delivery Date and the actual date of delivery up to maximum of 5% of the Purchase Price shall be paid as liquidated and ascertained damages.

The exercise of one (1) or more of the options set above does not preclude Boeing from exercising such other options, rights or remedies provided for under this Agreement or at law or in equity.

3. **DATA RIGHTS**

- a. **Definitions.** "Software" means all software delivered under this Contract in the form required by the specification or statement of work. "Equipment" means tangible items delivered under this Contract that are not Software or Documentation. "Embodiment" means all flow charts, logic diagrams, programmer's notes, user's manuals, listings, and such other material necessary for the use, upkeep, maintenance, and modification of all or any portion of the Software.
- b. **License.** To the extent necessary to exercise its rights under the Contract, Seller grants to Buyer for its internal purposes an irrevocable, fully-paid license under all applicable patents, trade secrets, copyrights, or other intellectual property. Buyer's license rights include the following rights related to specific Equipment:
 - (1) The right to use, reproduce, and modify the Software;
 - (2) The right to use, reproduce, and modify the Documentation; and
 - (3) 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.
- c. **Buyer's Rights.** Buyer may cause a Seller, for the benefit of Buyer, to exercise the rights granted to Buyer under this Contract so long as Buyer takes reasonable measures to protect information that the Seller has identified to the Buyer as confidential information and that is included in the disclosure to the Seller. Buyer's obligation to take reasonable measures shall 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 shall include an Embodiment of the source code. In addition to Buyer's license to any source code presently delivered as part of the Software under this Contract, Seller grants to Buyer for its 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 Equipment for whatever reason.

4. **MILESTONE PAYMENTS**

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

- a. **All-Risk Insurance.** Seller shall insure the Equipment against fire and other perils under a suitable all-risk policy in a form and with insurers satisfactory to Buyer, shall cause such insurers to name Buyer as a loss payee on such policy, and shall cause such insurers to provide to Buyer a certificate of insurance evidencing such coverage and indicating that such insurance will not be canceled or materially altered without thirty (30) days prior written notice being provided to Buyer, and otherwise holding Buyer harmless from any claims for premiums in connection with such policy. Seller hereby represents that it has not granted, and hereby covenants that it will not grant, to any third party directly or indirectly a security interest i.e. in the form of a lien, whether or not subordinate to the interest hereby granted to Buyer in the Equipment.
- b. **Title and Risk of Loss.** Risk of loss of the Equipment shall remain with Seller until delivery to Buyer's facilities, at which point Buyer shall 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 Equipment, (ii) Equipment 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 shall pass to Buyer immediately on their acquisition or creation by the Seller or their otherwise becoming identified to the Contract. Such passage of title shall not constitute acceptance by Buyer of such materials or of the Equipment into which they are incorporated, nor shall any Warranty Period commence with respect to such materials or Equipment, nor shall Seller be relieved of its liability on any third-party contracts.
- c. **Segregation.** Any Equipment located at Seller's premises shall be conspicuously marked and tagged indicating ownership by Buyer; and, except as required for performance, be (i) segregated from any non-Equipment or items owned by Seller or any third parties and maintained in a separate area and (ii) restricted to access only by Buyer employees and authorized employees of Seller or its subSellers that are specifically assigned to work in that area. Seller's failing to comply in all particulars with the foregoing requirements shall not in any way impair or invalidate Buyer's ownership interest in the Equipment that are the subject of Seller's breach.
- d. **Ordinary Course.** Seller represents that it is in the business of supplying the Equipment being purchased by Buyer and the materials or parts therefor. Further, Seller represents that the Equipment, including the materials or parts therefor and the work in progress, are being sold in the ordinary course of the Seller's business and that the Seller's secured creditor, if any, authorizes sales in the ordinary course of business.

5. **SELLER'S REPRESENTATION**

The Seller represents and warrants that:

- a. It possesses the necessary skills, expertise and experience to provide the Equipment as set forth in the Agreement;
- b. It understands the Equipment requirements and will be able to satisfy those requirements;
- c. It will exercise professional and good judgement in carrying out and performing its obligations under this Agreement and

the Seller acknowledges and agrees that Boeing relies upon the skills and the judgement of the Seller to carry out its obligations under this Agreement, and;

- d. There are no actions, suits or proceedings pending or threatened against or adversely affecting or which could adversely affect, the business of the Seller or its assets before or by any federal, provincial, municipal or governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign, whether or not insured and which might involve the possibility of any impairment to the business of the Seller or any lien, charge, encumbrance or any other right of another against the assets of the Seller;
- e. At the time of Final Acceptance the Equipment will be free and clear of all claims, liens, attachment, charges, encumbrances or security interests;
- f. The Equipment have been properly installed and/or implemented in a proper and workmanlike manner;
- g. The Equipment is new, not refurbished and is in good working order;
- h. Will function in accordance with all of the requirements;
- i. Will not infringe upon any copyright (including moral rights) patent, trade secret, industrial design of any Third Party in any country;
- j. Seller's personnel are competent and experienced in providing the Equipment;
- k. Seller will provide the necessary supervision, training, Equipment and all other things necessary for the performance/provision of the Equipment.

6. SELLER'S RESPONSIBILITIES

- a. Provision of the Equipment will be in a consultative manner with Boeing and to the full satisfaction of Boeing;
- b. The Seller will be fully responsible to ensure that integration and compatibility of all components of the Equipment meets the requirements of the Agreement;
- c. If modifications are required, the Seller will supply and install as necessary to meet the requirements;
- d. Deliver, install and connect the Equipment on or prior to the date specified in the Agreement;
- e. Provide the documentation related to the Equipment which will include all amendments, revisions and adjustments;
- f. Title to the Equipment will vest in Boeing upon delivery and final acceptance of Equipment by Boeing.