

TERMS AND CONDITIONS FLOW DOWN

COUNTERFEIT PARTS PREVENTION

A. Definitions:

- (1) Authentic – shall mean (A) genuine; (B) purchased from the Original Equipment Manufacturer (“OEM”), Original Component Manufacturer (“OCM”) or through the OEM’s/OCM’s authorized dealers; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
- (2) Authorized Aftermarket Manufacturer – An organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.
- (3) Authorized Dealer – A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM’s/OCM’s products.
- (4) Authorized Supplier – A supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.
- (5) Common Item – An item that has multiple applications versus a single or peculiar application.
- (6) Contract Manufacturer – A Company that produces goods under contract for another company under the label or brand name of that company.
- (7) Contractor Approved Supplier – A supplier that does not have a contractual agreement with the original component manufacturer for a transition, but has been identified as trustworthy by a contractor or subcontractor.
- (8) Counterfeit Electronic Part – An unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic 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 electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- (9) Counterfeit Item – An unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item 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 items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- (10) Major Nonconformance – A nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.
- (11) Non-Franchised Source – Any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.
- (12) Obsolete Electronic Part – An electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.
- (13) Original Component Manufacturer (OCM) – An organization that designs and/or engineers a part or equipment and is entitled to the intellectual property rights to that part or equipment.

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(14) Original Equipment Manufacturer (OEM) – A company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

(15) Original Manufacturer – The Original Component Manufacturer, the Original Equipment Manufacturer, or the Contract Manufacturer.

(16) Suspect Counterfeit Part – A part that GD-OTS or the Seller becomes aware, or has reason to suspect through credible evidence, provides reasonable doubt that the part is authentic and, meets the definition of "counterfeit part", as defined above. For purposes of this document, the terms "counterfeit part" and "suspect counterfeit part" will be used interchangeably. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.

B. Terms and Conditions:

(1) SELLER represents and warrants that only new and authentic materials are used in products required to be delivered to GD-OTS and that the Work delivered contains no Counterfeit Items or Counterfeit Electronic Parts (hereinafter referred to collectively as "Counterfeit Parts"). No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by GD-OTS. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the Original Manufacturers ("OMs) or through the OMs authorized dealers (Authorized Aftermarket Manufacturer, Authorized Dealer, Authorized Supplier, or Contract Manufacturer). SELLER represents and warrants to GD-OTS that all parts/components delivered under this contract are traceable back to the OM. SELLER must maintain and make available to GD-OTS, at GD-OTS' request, OM documentation that authenticates clear traceability of the parts/components to the applicable OM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by GD-OTS. SELLER must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. GD-OTS' approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.

(2) SELLER shall maintain a documented system (Standard Practice, procedure, or other documented approach) that provides for prior notification and GD-OTS approval before parts/components are procured from sources other than OMs or the OMs authorized dealers. SELLER shall provide copies of such documentation for its system for GD-OTS' inspection upon its request.

(3) SELLER must maintain a counterfeit detection process (including inspection, testing, and authentication) that complies with SAE standard AS5553, *Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition*, and a detailed process to ensure that excess and nonconforming parts do not enter into the supply chain.

(4) SELLER assumes responsibility for the authenticity of parts provided by OMs or the OMs authorized dealers.

(5) If it is determined that counterfeit parts or suspect counterfeit parts were delivered to GD-OTS by SELLER, the suspect counterfeit parts will not be returned to the supplier. GD-OTS reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies. SELLER shall promptly reimburse GD-OTS for the full cost of the suspect counterfeit parts and SELLER assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this section shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity.

(6) If the procurement of materials under this contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this contract may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a Federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

(7) SELLER shall flow the requirements of this section ("COUNTERFEIT PARTS PREVENTION") to its subcontractors and suppliers at any tier for the performance of this Contract.

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(8) This Section and its subsections shall survive termination, expiration or cancellation of this contract.

C. References and Applicable Regulations

1. National Defense Authorization Act for FY 2012, Sec 818
2. FAR 52.246-26, Reporting Nonconforming Items
3. DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
4. DFARS 252.246-7008, Sources for Electronic Parts
5. Presidential Memorandum on Combatting Trafficking in Counterfeit and Pirated Goods, dated April 3, 2019
6. GIDEP: <http://www.gidep.org/about/opmanual/opmanual.htm>