

**TERMS AND CONDITIONS  
RAYTHEON EXCESS EQUIPMENT SALE CONTRACT**

This Agreement is made by Raytheon Company, 1300 Eubank Boulevard SE Albuquerque, NM 87123, ("Seller"), and \_\_\_\_\_ ("Buyer") as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THIS CONTRACT WAIVES IMPORTANT WARRANTIES.  
PLEASE READ THE FULL CONTRACT CAREFULLY**

- 1) Goods Sold; Price; Delivery. Seller agrees to sell to Buyer certain excess goods held by Seller as scrap, more particularly described in the attached Exhibit A ("Excess Equipment"). The agreed upon purchase price of \_\_\_\_\_ evidences Buyer's independent judgment of the salvage value of the Excess Equipment, if any, and is payable in cash or by certified check at the time of delivery of the Excess Equipment, or upon signing this Agreement. Delivery shall be made at Seller's storage facilities at 1300 Eubank Boulevard SE, Albuquerque, NM or 10800 Gibson Boulevard SE Albuquerque, NM. Loading and transporting the Excess Equipment from Seller's storage facilities is solely Buyer's responsibility. All Excess Equipment must be removed in \_\_\_\_\_ days of the signing of this agreement or will it be considered abandoned.
- 2) Inspection. Seller shall not be bound by the descriptions of the Excess Equipment contained in the advertisements. In order to enable Buyer to independently determine the value and quality of the Excess Equipment offered by Seller, Seller explicitly requests that Buyer inspect the Excess Equipment. Buyer may inspect the goods at Seller's storage facilities at any time during normal business hours at Buyer's expense, and in any reasonable manner Buyer may choose. If Buyer declines inspection of the Excess Equipment, or if Buyer fails to conduct an inspection prior to \_\_\_\_\_ then Buyer will be deemed to have waived inspection.
- 3) Waiver – Express and Implied Warranties. SELLER DOES NOT WARRANT THAT THE EXCESS EQUIPMENT ARE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE AND THIS SALE IS MADE "AS IS" AND "WITH ALL FAULTS". SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES.
- 4) Waiver - Warranty of Title. Seller assumes no responsibility that the title conveyed to Buyer is good or its transfer rightful, or that the goods shall be delivered free from any security interest or other lien or encumbrance, or free from any rightful claim of any third person. Seller is selling only the right, title, and interest it has in the Excess Equipment.
- 5) Waiver - Warranty Against Infringement. Seller does not warrant that Buyer's use or subsequent sale of the Excess Goods won't infringe upon any United States or foreign patent.
- 6) Representations and Warranties of Buyer. Buyer assumes any and all liability arising out of (i) loading and transportation of the Excess Equipment; (ii) resale of any of the Excess Equipment by Buyer or any other person or entity; (iii) operation and use of any of the Excess Equipment by Buyer or any other person or entity; (iv) disposal of any of the Excess Equipment by Buyer or any other person or entity; or (v) environmental damage due to any wastes which may be contained in or result from the use of any of the Excess Equipment by Buyer or any other person or entity.

Buyer shall indemnify, defend and hold Seller harmless from any liability relating to the representations and warranties of this paragraph.

- 7) Agent's Representations Not Binding – Prior Dealing, Trade Usage Not Relevant. This Agreement is intended by Buyer and Seller to be the final, exclusive, and complete expression of their agreement and its terms. Seller is not bound by any employee's representation, promise, or inducement not part of this Agreement. No course of prior dealings between the parties and no usage of trade is relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of or acquiescence in a course of performance rendered under this or any prior Agreement is not relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection.
- 8) Limitation of Liability. IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PURCHASE PRICE OF THE EXCESS EQUIPMENT IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.
- 9) Use of Name. As an express condition of this sale, Buyer shall not, either directly or indirectly, use or refer to Raytheon Company or any of its subsidiaries in any advertising or publicity concerning the items purchased, whether standing alone or as part of another system. Buyer agrees that in the event it violates this provision, Raytheon may obtain injunctive relief or otherwise proceed with all of its available equitable and legal remedies against Buyer for breach of this Agreement.
- 10) TAXES. Buyer will be responsible for payment of any applicable taxes as governed by local, county, state or federal law.
- 11) Modification. This Agreement may only be modified by a writing signed by the parties or their duly authorized agents.
- 12) Assignment. Buyer may not assign this Agreement without Seller's prior written consent.
- 13) Controlling Law. This contract shall be interpreted in accordance with the substantive laws of New Mexico. Buyer shall be responsible for compliance with all laws and licensing requirements regarding the possession, use, transportation and/or disposal of the Excess Equipment.
- 14) Time for Bringing Action. Any action for a breach of this Agreement must be commenced within one year after the cause of action has accrued.
- 15) EXPORT CONTROL. The Buyer will comply with any and all applicable local, city, state, and federal laws, regulations and ordinances. A "Buyer's" compliance obligation hereunder shall include all laws and regulations of the U.S. Government concerning export control, including, but not limited to the U.S. Department of Commerce, Export Administration Regulations (EAR) and U.S. Department of State, International Traffic in Arms Regulations (ITAR). In the event that " Buyer" proposes to sell and transfer Material that falls within the definition of a "Defense Article", as

set forth in ITAR 120.6, to any "Foreign Person" as defined in ITAR 120.16, outside the U.S., "Buyer" will promptly notify "Material Provider" in writing. To effect such a sale and transfer, "Buyer" will be required to register with the US. Department of State, Office of Defense Trade Controls (ODTC), as an exporter of Defense Articles, under ITAR Part 122. To become an exporter of Defense Articles, "Material Provider" may also be required to register with and be licensed by ODTC as a "Broker" as defined in ITAR Part 129. Prior to any transfer of a defense article to a foreign person outside the U.S., "Buyer" must apply for and obtain an export license from the U.S. Department of State, Office of Defense Trade Controls, pursuant to relevant provisions of ITAR Parts 120-130. After obtaining the required export license, "Buyer" shall comply with all terms and provisos of the export license and export compliance provisions of the ITAR in making the transfer. In the event that "Buyer" proposes to sell and transfer Material that falls within the definition of Commercial or Dual Use commodity (15 CFR 734) listed on the U.S. Department of Commerce, Commodity Control List (CCL) (15 CFR 774) to a foreign national (15 CFR 734) outside the U. S., "Buyer" shall promptly notify "Material Provider" in writing. Prior to any transfer of such Material to a foreign national outside the U.S., "Buyer" must apply for and obtain an export license from the U.S. Department of Commerce, Bureau of Export Administration (BXA), if required export license, "Buyer" shall comply with all terms and provisos of the export license and export compliance provisions of the EAR in making the transfer.

**16) Buyer's Liability:**

- I) Buyer shall take title to the Items as of the moment the Items leave Seller's facility at \_\_\_\_\_, and shall assume any and all liability of any kind which may arise out of:
  - a) transportation of the Items,
  - b) resale of any of the Items by Buyer or any other person or entity,
  - c) use of any of the Items by Buyer or any other person or entity,
  - d) disposal of any of the Items by Buyer or any other person or entity.
  - e) disposal of any wastes containing any part of any of the Items by Buyer or any other person or entity, or
  - f) disposal of any wastes which may result from the use of any of the Items by Buyer or any other person or entity.
- II) With respect to any Item as of the moment the Item leaves Seller's facility at \_\_\_\_\_, Buyer shall hold Seller harmless and forever indemnify Seller from and against any and all claims, demands, actions, costs, expenses (which term is hereby defined to include any and all attorneys', consultants', expert witness's or accountants' fees) , damages and obligations of any nature, including but not limited to claims by government agencies or third parties for investigation, response, removal, clean-up, and/or remediation, arising from or related in any way to a) through f) set forth above.

**17) Indemnity to Raytheon by purchasers of Raytheon surplus equipment which may contain hazardous substances:**

- I) All items identified on this purchase order ("Items") are purchased "AS IS", packaged in accordance with Buyer's instructions. Buyer shall take title to the Items as of the moment the Items leave

Seller's facility at [address of facility], and shall assume any and all liability of any kind which may arise out of:

- a) transportation of the Items,
- b) resale of any of the Items by Buyer or any other person or entity,
- c) use of any of the Items by Buyer or any other person or entity,
- d) disposal of any of the Items by Buyer or any other person or entity ,
- e) disposal of any wastes containing any part of any of the Items by Buyer or any other person or entity, or
- f) disposal of any wastes which may result from the use of any of the Items by Buyer or any other person or entity.

II) With respect to any Item as of the moment the Item leaves Seller's facility at [address of facility], Buyer shall hold Seller harmless and forever indemnify Seller from and against any and all claims, demands, actions, costs, expenses (which term is hereby defined to include any and all attorneys', consultants', expert witness's or accountants' fees) , damages and obligations of any nature, including but not limited to claims by government agencies or third parties for investigation, response, removal, clean-up, and/or remediation, arising from or related in any way to a) through f) set forth above.

Note: all tags, labels, etc. identifying Raytheon or any of its division or subsidiaries must be removed from the equipment before it is delivered to Buyer.

**18)** Buyer agrees not to make public the existence of this agreement, and to not share its existence with third parties without Seller's consent.

Buyer has conducted an inspection of the Excess Equipment.

Yes \_\_\_\_/ No \_\_\_\_ (initial one)

RAYTHEON COMPANY (SELLER)

BUYER

By: \_\_\_\_\_  
Its Duly authorized representative

By: \_\_\_\_\_  
Its Duly authorized representative

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_