

**“SAMPLE”
TERM CONTRACT AGREEMENT**

**<Company>
AND
DOD Surplus, LLC**

Term Contract No.

This Agreement, entered into on this ____ day of _____, 20__, between _____ (“Company”) and DOD Surplus, LLC (DOD Surplus), will remain in effect for a one year period, beginning thirty days after End Use Certificate approval by the Defense Reutilization & Marketing Service.

TERMS AND CONDITIONS:

Company agrees to purchase all of the specified property (the “Property”) offered by DOD Surplus at {insert location} (the “Location”). Company specifically understands and agrees that the terms of this Agreement are conditioned upon the timely removal of all Property during the Agreement period.

1. All sales are on an “**AS IS, WHERE IS, AND WITH ALL FAULTS**” basis, but that any commodities not specified in the lot description below may be removed by DOD Surplus and are not included in this Agreement. There are no warranties, either expressed or implied. No returns, exchanges or refunds are permitted under this Agreement.

THIS IS A TERM CONTRACT FOR [INSERT MATERIAL DESCRIPTION HERE ALONG WITH ANY LOGISTICS REQUIREMENTS ASSOCIATED WITH THE TERM, SUCH AS PROVIDING CONTAINERS, BUYER LOAD, ETC.]

2. DOD Surplus is obligated to collect sales tax as appropriate.
3. DOD Surplus is responsible for loading unless otherwise stated in 1 above. Company is responsible for securing, and transporting purchased property, to include all costs and risks associated with removal. Pick-up date/time must be coordinated in advance with DOD Surplus personnel. Pick-up of large pieces that can’t be moved by the Company without aid must also be coordinated in advance.
4. Company is responsible for the shipping of all items purchased, including any and all shipping related expenses.
5. No reselling of the Property by Company is allowed on DOD Surplus or the Property Location.
6. Certain pieces of property may contain residual chemicals, non-friable asbestos, petroleum products, ozone-depleting substances or other materials.
7. Company hereby agrees to defend, indemnify and hold harmless DOD Surplus from and against any and all damages, costs, claims or liability (including reasonable attorneys’ fees) for any injuries to persons or property of any type whatsoever, occurring during or resulting from the sale, removal, use or operation of the purchased item(s) or otherwise arising out of this Agreement or the transactions contemplated hereby.
8. Some items may be subject to export restrictions imposed by applicable United States Laws and Regulations. Company is fully responsible for compliance with all such laws and restrictions.
9. In the event any dispute occurs relative to any issue associated with this Agreement, DOD Surplus shall have the sole and exclusive authority to resolve and/or make all final determinations with respect thereto.
10. This agreement will require a complete and approved End Use Certificate (EUC) DLA Form 1822.

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11. Property sold from locations other than DRMO scrap yards will require pick up within 5 days of notification by DOD Surplus. The Company's failure to remove property within required pick up timeframe or to make suitable accommodations for an extension to the pick up timeframe with DOD Surplus will be deemed a material breach of this Agreement by the Company.
12. Title to property shall not pass from DRMS or DOD Surplus to the Company until all conditions of sale in this Agreement have been met, including, but not limited to any requirements of Demilitarization as a Condition of Sale (DCS) property. Company agrees to perform all demilitarization or other mutilation of property in accordance with applicable Department of Defense regulations (See DOD 4160.21-M-1, Defense Demilitarization Manual) and the surveillance plan attached hereto (Exhibit A).
13. Company will provide certificates of destructive scrapping for all sales of Property to DOD Surplus (except DCS property) within 30 days of receipt of property on the form and in the manner proscribed by DOD Surplus.
14. In the event that an item must be recalled for any reason, Company agrees to cooperate with DOD Surplus and the DRMS to return the item(s) at DRMS' expense.
15. This Agreement is not intended to include hazardous materials or hazardous wastes; however, the Company is advised that certain items may contain residual chemicals or materials that (in certain concentrations) would meet the definition of a hazardous material or waste. Company agrees to take all legally required actions under all applicable laws and regulations in the handling of materials sold under this Agreement, and to release, hold harmless and indemnify DOD Surplus against any damages or injuries resulting from a transfer of property containing residual hazardous materials or waste.
16. Company will abide by all applicable international, federal, state, local and DOD laws, statutes, ordinances, regulations, and procedures pertaining to the handling, scrapping, transport, removal, disposal or recycling of material provided under this Agreement, and that the Company will indemnify DOD Surplus and the DRMS against any and all claims, losses, costs or liabilities arising out of or associated with Company's failure to comply with such laws and regulations.
17. Company shall maintain the below-specified types and amounts of insurance covering DOD Surplus, LLC, DOD Surplus, LLC, the U.S. Government, any Subcontractor, any and all services performed by Company and/or Company's Subcontractor and/or any and all individuals and/or third parties directly and/or indirectly employed by Company and/or Subcontractor. Company shall also provide insurance covering DOD Surplus and their directors, officers and/or employees where provided herein. The insurance terms shall include a provision that the Insurer will not cancel or change the coverage provided without first giving the DOD Surplus thirty (30) days prior written notice.

Company shall carry the following minimum insurance coverage:

- a. Automobile and Commercial General Liability Insurance (either primary or combination of primary and umbrella coverage) including coverage for products and completed operations, with limits of not less than \$1,000,000 with respect to bodily injury or death to any one person, not less than \$1,000,000 for bodily injury or death to any number of persons in one accident or occurrence, and not less than \$1,000,000 property damage in any one accident or occurrence;
- b. Fire Legal Liability (Minimum \$100,000);
- c. Personal and Advertising Injury Insurance with limits of not less than \$300,000 per occurrence;
- d. Worker's Compensation Insurance, as required by law with limits of not less than \$500,000 per occurrence and per disease limit and Employer's liability insurance with limits of not less than \$100,000 with respect to bodily injury or death to any number of persons in one accident or occurrence, and not less than \$100,000 property damage in any one accident or occurrence;
- e. Company shall maintain a blanket fidelity bond covering all employees in an amount not less than \$100,000 for each employee; and
- f. Such other types and amount of insurance as required by law and/or deemed necessary by DOD Surplus in connection with the work to be performed under this Contract.

18. The terms and conditions of sale from DOD Surplus's web site are hereby incorporated by reference. The terms may be found at <http://www.govliquidation.com/terms.htm> and are attached hereto as Exhibit B. In the event of any discrepancy between the terms and conditions posted on DOD Surplus's web site and the provisions of this Contract, the terms of this Contract shall control.

PAYMENT AND REMOVAL:

Company agrees to pay, in exchange for the receipt of the described goods, the amount of \$____, which is based on an assumed delivery of _____ lbs. of Property. Immediate payment of 8.33% of the total price bid will be due within five (5) business days of award of the Property to the Company. Earnest money deposits will be applied to the last invoice under this agreement or any extension of this agreement, and any residual monies left over after the application of the earnest money to the last invoice will be refunded to the Company. Subsequent payments will be due not later than 5 business days from date of invoice. Late payments will be assessed interest at the rate of 18% annually (or the maximum amount allowed by law, whichever is less). Invoice will be sent via email to the email address on your DOD Surplus account. Invoices will be calculated by dividing the total price bid plus buyer's premium by the total weight, and then applying the price per pound to the actual weight removed. From the time of verbal notification by DOD Surplus to "pick up" the goods, Company will be given 3 working days to arrange removal and deliver payment to DOD Surplus. Payment must be made by credit card, wire transfer, cashier's check, certified check, company check or money order. Sales tax will be charged unless proof of exemption is provided at the time the Agreement is executed and proof provided that the exemption is valid through the life of the Agreement.

CANCELLATION:

This agreement may be canceled by either party at any time by giving 30 days prior written notice of intent to cancel. Notice shall be considered delivered upon delivery by U.S. mail, overnight courier, or hand delivery. The parties agree that they will continue performance during the 30-day period unless waiver of the 30-day requirement is agreed to by both parties.

CANCELLATION FOR CAUSE:

In the event of a material breach, the breaching party shall have up to ten calendar days to cure the breach, except where the breach is for non-payment, in which case the breach must be cured within 72 hours of the breaching party's failure to pay, and except for when the breach by its nature, cannot be cured within 10 calendar days. A material breach may include (but is not limited to): failure to pay by the payment due date, failure to complete the demilitarization of the property in accordance with the terms specified in Item 1 above, failure to return property under escort to GL at the end of the business day, or failure to submit proper EUC documentation. If (i) the breach is not cured within the time periods for curing the breach described above or (ii) the breach by its nature cannot be cured within 10 calendar days, the non-breaching party may terminate the contract without further obligation by giving written notice of termination thereof to the breaching party.

GOOD FAITH:

This agreement is in effect for the period described above. It is an exclusive Agreement between DOD Surplus and Company in that DOD Surplus acknowledges we will not sell a like commodity to any other customer at this site and during the period of the Agreement.

COUNTERPARTS:

This Contract may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will constitute one and the same instrument. The parties agree that a facsimile signature page has the same force and effect as an original signature.

AGREEMENT TO BE BOUND:

By my signature below I certify that I am authorized to bind the Company to this Contract, and that the Company has read, understands and agrees to be bound by the terms of this Contract.

<Company>

DOD SURPLUS, LLC

By: _____

By: _____

Dated: _____

Dated: _____

Telephone: _____

Email: _____