

# Surplus Equipment Consortium/Network – Specification

SEC/N.S1.SP.01.B

Elements of a Standardized Contract

## Standard Contract Elements

### 1. DOCUMENT TITLE

- a. The title should briefly state the overall purpose of the document. Some examples of titles are "Sale Agreement", "Equipment Transfer." Or Purchase Agreement. The document title should be placed at the top of the document for easy referencing

### 2. UNIQUE NUMBER AND DATE OF AGREEMENT

- a. A number used to identify that particular document. Whether that number is a tracking number or an identification number, that number should be displayed on the document for reference and verification purposes. The contract should also contain a date as a reference point for when the document was first delivered.

### 3. IDENTIFICATION OF THE PARTIES

- a. This section of the document provides the contact with information about the parties involved in the agreement. In this section, the legal names, DBA's, state of incorporation should be used along with contact information for each, including (but not limited to) addresses, phone numbers, and email addresses.

### 4. RECITALS

- a. An introductory statement regarding the background of the transaction or the existence of certain facts, such as: "This contract is made with reference to the following facts."
- b. This could also include a brief statement of what the parties' interests are in entering into the contract.

### 5. THE AGREEMENT

- a. **DOCUMENT PURPOSE** - In this portion is a statement describing the type of transaction and applicability. This portion defines what and why the contract is being drawn up, whether it is a sale, ownership transfer, service or any other type of transaction
- b. **EQUIPMENT/MATERIAL DESCRIPTION** - The equipment's model number, full description including features, S/N and any other defining characteristics (Equipment Condition Index) of the equipment should be included in the contract. This information provides that both buyer and seller agree on the description of the subject matter of the contract.
- c. **SELLING PRICE AND PAYMENT TERMS** - The selling price, currency, mode of payment (ie. cash or letter of credit) the time when the selling price is due, any progress payments or deposits should be place in this section. This section should also reference which party is responsible for any taxes, fees or duties associated with the transaction.
- d. **DISCLOSURES** - A full disclosure of properties pertaining to the equipment should be made by the selling party. This may include, but is not limited to, status of the software license (existing on the tool or the need to acquire from the OEM), issues with respect to title, EHS, XFM, and/or any known history or problems associated with the equipment.

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- e. **DELIVERY, SHIPPING AND RISK OF LOSS-** In this section is a detailed description of timing of the shipment, criteria related to deinstallation, crating, type of shipping, insurance and when risk of loss and title transfers. This would be the proper place to schedule which party, the buyer or the seller, should pay for these costs. The criteria should be as specific as possible regarding which party is responsible for performing the function (i.e. buyer, seller, OEM or third party) and any standard that should be observed when performing the act (ie. such as a specific mode of shipment like “air ride” transportation).
  - f. **WARRANTY** – In the event that a warranty is offered with the system the terms of that warranty should be stated here. This should include the scope of the warranty, any limitations on the warranty (such as no implied, express, merchantability, fitness of a particular purpose) the time-period of the warranty, any options (ie. term, price and limitation) to extend the warranty and any conditions that would void the warranty. Equipment that is sold without warranty is typically stated to be sold “AS IS/WHERE IS” basis.. This section may also reference the warranty associated with title to the equipment.
  - g. **REFURBISHMENT/REMANUFACTURER:** This section should provide a statement as to the scope and standard of measurement of the work to be done.
  - h. **ASSIGNMENT:** This section will set forth the agreement the parties have reached regarding the ability of either party to assign their obligations to a third party.
  - i. **ENTIRE AGREEMENT:** This section states that the written contract is the sole agreement between the parties and any modifications to the agreement must be made in writing and signed by both parties.
  - j. **SECURITY INTEREST:** This section would discuss conditions associated with the seller retaining a security interest in the tool until they have been paid in full.
- 6. TERM OF CONTRACT**
- a. **EFFECTIVE DATE** - A contract should always have a date defined as to when the contract becomes effective and legally binding
  - b. **EXPIRATION DATE** -In contrast to the effective date, the expiration date defines the date that the document/agreement expires. This date should be able accommodate preparation and transfer time for the equipment.
- 7. DEFAULT AND REMEDIES**
- a. A section should state the conditions or events that would constitute a default and the remedies or limitations on any remedies that would be available to the appropriate party..
  - b. An optional section may deal with cancellation penalties. In order to preclude any one party canceling their part of the sale or breaking contract, the parties may agree upon a penalty to be paid in the event of cancellation.
- 8. COMPLIANCE WITH LAWS**
- a. This section will typically state that both parties agree to abide by any laws and/or regulations that pertain to the equipment transfer (ie. national, state, local and/or international). It may also make reference to specific laws that require

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special attention due to the nature of the transaction or the equipment. For example, this might include a specific reference as to which party has the responsibility to comply with any environmental or export laws/regulations such as obtaining Department of Commerce consent.

b. Governing Law should be agreed upon in this section as well.

## 9. CONFIDENTIALITY

a. This area of the document defines any confidentiality requirements that may be a condition of the transfer or sale of equipment.

## 10. FORCE MAJEURE

a. This is a provision that allocates the risk between the parties in the event the contract can not be performed due to an event the parties could not control or anticipate such as a force of nature event.

## 11. AUTHORIZED SIGNATURES

a. The signature of an authorized person from the business entity indicates consent to the terms and conditions of the agreement. This section should contain a signature from each parties authorized person, the printed name, title and date for each party. It may also be necessary to obtain a corporate resolution from the company to authenticate that the party that signed the document had authority to sign on behalf of the business entity.

### **Disclaimer:**

**Do not rely upon this guideline in drafting actual contracts to be provided to customers. Each company should have all of their purchase, sale and other documents associated with buy/sell agreements reviewed by their individual counsel prior to submission to a customer. The purpose of this outline is to provide a guide of typical elements contained in buy/sell contracts.**