

The Exchange (To be completed by Buyer)

VENDOR PROCUREMENT # _____ **VENDOR PAYMENT #** _____

This agreement will become effective on: _____ **or the date signed, whichever is later and will end:** _____
unless sooner terminated. Agreement is extended to end: _____

The agreement has an estimated value of: _____

New Vendor Update Existing Vendor European Addendum Applies Commodity: _____

VENDOR PROVIDED INFORMATION ****This form must be completed on each line that applies****
Please Type or Print and Attach Blank Letterhead and Company Invoice

Vendor Name: _____ Attention: _____

Address: _____ City: _____ State: _____ Country: _____ Zip/Postal Code: _____

Phone Number: _____ Fax Number: _____

Toll Free Number: _____ Email: _____

Federal Tax Identification Number: _____ Duns Number: _____

Vendor agrees to receive orders and send advanced ship notices (ASNs) and invoices via EDI unless specifically waived by AAFES.

The address above can be used for mailing: Purchase Order Payment Pricing Tickets *Other

*Attach a separate page listing the other addresses and their purposes.

OFFEROR REPRESENTS (Check appropriate boxes):

Business Type: Manufacturing Distribution/Wholesale Carrier Government Other

That it is is not a small business.

That it is is not a women-owned business.

That it is is not a minority business enterprise.

African American Hispanic American Asian Pacific American Native American/Alaskan

That it is is not a Small Disadvantage Business.

That it is is not a Veteran-Owned Business.

That it is is not a Service-Disabled Veteran Owned Business.

That an owner or officer of the firm or the firm or a related firm has has not been convicted of a felony related to a business transaction.

That an owner or officer of the firm or the firm or a related firm has has not been suspended or debarred.

That the person signing this contract is an individual having the authority to obligate the firm contractually.

VENDOR SERVICING ORGANIZATION (if applicable)

Company Name: _____ Attention: _____

Address: _____ City: _____ State: _____ Country: _____ Zip/Postal Code: _____

Phone Number _____ Fax Number: _____

Toll Free Number: _____ Email: _____

Attach store service agreement. Programs that are accepted will become part of this agreement.

VENDOR TERMS - Negotiable Payment Terms

Negotiable Payment Terms: Cash Discount (enter whole percent) _____ % days available _____ Net payment days available _____ EOM _____

Anticipation: Yes No Unknown Prime

Purchase order minimum: None _____ Pounds _____ Cases _____ Units _____ Dollars _____

Shipping Terms: Freight FOB Origin FOB Destination

Contractor lead time _____ days after receipt of order or ship date on purchase order, whichever is later.

List all ship points (City, State, Country with Zip/Postal Code):

COMPLIANCE FOR EXCHANGE RETAIL VENDORS

The Exchange (To be completed by Buyer)

The Exchange Suppliers Requirements are located on the Exchange Internet site at <http://www.shopmyexchange.com>; Doing Business with the Exchange; Important Documents. Sections 1, 2A, 3, 4, 4A, 4B, 5, 6 and Annual Business Terms Agreement (BTA) apply to all vendors. In addition, the sections and paragraphs below are also made a part of this agreement. Vendor has read and agrees to comply with the provisions as outlined.

<input type="checkbox"/> Section 1A, Paragraphs: _____	<input type="checkbox"/> Section 2, Tax: _____
<input type="checkbox"/> Section 5A, General Instruction: _____	<input type="checkbox"/> Section 7, Fashion Distribution Facility: _____
<input type="checkbox"/> Section 8, Fine Jewelry: _____	<input type="checkbox"/> Section 9, Food and Beverage: _____
<input type="checkbox"/> Section 10, Exchange Mail Order Catalog/Internet: _____	<input type="checkbox"/> Section 11, Retail Merchandise: _____

RETURN POLICY - Vendor must check options below

Option 1 - Defective/Returned Merchandise Allowance: Vendor will allow the defective and returned merchandise allowances as listed in the Business Terms Agreement (BTA). The percentage must be adequate to cover processing costs.

Exchange facility may dispose of returned merchandise through salvage outlets.

Exchange facility must destroy returned merchandise.

Returned merchandise will be sent from the Exchange facility to the vendor. If vendor requests the returned merchandise be sent to them, they will be charged cost plus a 10% handling charge and return freight charges billed to vendor.

Option 2 - Defective/Returned Merchandise: Return Merchandise to Vendor: Defective/Returned merchandise will be sent from the Exchange facility to vendor. If vendor requests the returned merchandise be sent to them they will be charged cost plus a 10% handling charge and the merchandise will be shipped with return freight charges billed back to vendor. Permanent Return Authorization Number _____, if required for shipment. If automatic return is not possible, an 800 number or e-mail address must be provided to secure Return Authorization over the phone.

Option 3 - Special Instructions _____

Phone Number: _____ Toll Free Number: _____

Email: _____

RECALLED MERCHANDISE RETURN POLICY

Vendors will be charged merchandise cost, a 10% handling charge and return freight charges if vendors request recalled merchandise be returned to vendors or a third-party. If vendors request recalled merchandise be destroyed by the Exchange facility, vendors will be charged merchandise cost plus a 10% handling charge. These costs will not be covered by the usual defective/returned merchandise allowance.

ADDRESS TO SHIP RETURNS:

Vendor Name: _____	Attention: _____
Address: _____	City: _____ State: _____
Country: _____	Zip/Postal Code: _____

SIGNATURES

Vendor Signature _____	Date _____	Contracting Officer Signature _____	Date _____
Printed Name _____	Title _____	Printed Name _____	COC _____

1. LEGAL STATUS (Aug 08). The Army and Air Force Exchange Service (the Exchange), including its activities, offices, and individual exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States Government. The Exchange contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event the Exchange will reimburse the U.S. Government. The Exchange procurement policy is established by applicable directives and instructions promulgated by the Department of Defense. The Federal Acquisition Regulation (FAR) does not apply to the Exchange.

2. AUTHORITY TO BIND (Nov 95).

- a. "Contracting Officer" means a person authorized by the Commander, Army & Air Force Exchange Service to execute and administer contracts, purchase orders, or other agreements on behalf of the Exchange. Only contracting officers may waive or change contract terms; impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contractors, and issue final decisions on contractor claims.
- b. The contracting officer may authorize other Exchange and government officials to perform actions of an administrative nature such as conducting inspection and audits; placing orders against existing contracts; forwarding requests for contract changes to the contracting officer; collecting contract payments, and processing routine documents. The officials are not contracting officers, as defined in a. above.
- c. The Exchange has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the contracting officer. The contracting officer may deny claims based on such actions. Contractors' should refer questions concerning the authority of other Exchange or governments officials to the contracting officer.

3. EXAMINATION OF RECORDS (Aug 08).

- (1) This clause applies if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative will have the right to examine and audit the books and records of the contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract. The contractor agrees to include this clause in all subcontracts that exceed \$10,000.
- (2) "General Accountability Office" may be substituted for "contracting officer or his duly authorized representative" when the prospective contractor does not accept the standard wording of the examination clause.
- (3) Contracts awarded to foreign contractors may exclude the examination clause when its use is precluded by the laws of the country involved, subject to the approval of the servicing the Exchange General Counsel (Exchange HQ and Exchange Europe). Contract files will be in such circumstances be documented to show the basis for exclusion of the clause.

4. PROCUREMENT INTEGRITY (APR 12).

- a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this Exchange purchase action:
 - (1) that no discussion, offer or promise of future employment or business opportunity has been or will be made to the Exchange civilian or military personnel who participated personally and substantially in the purchase action;
 - (2) that no offer, promise or gift of any gratuity, entertainment, money, or other thing of value has been or will be made to any Exchange civilian or military personnel or any other employee of the United States Government or member of their family or household;
 - (3) No proprietary information of other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under the Exchange procedures.
 - (4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the contractor for the purpose of securing business.
- b. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other things of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.
- c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of a possible violation of this clause.
- d. For breach of any of these certifications, the Exchange may terminate this contract for default, and/or deduct from amounts due under this or other contracts, or charge contractor for, the total value of any contingent fee, gratuity or kickback or other loss to the Exchange arising out of the breach.

- 5. ADVERTISEMENTS (Aug 08).** Contractor will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States, including the Exchange. All contractor advertisements that refer to the Exchange or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole, or in part, by the Exchange, the military exchange system, or the United States Government.
- 6. INDEMNIFY AND HOLD HARMLESS (Nov 96).**
- a. The contractor will indemnify, hold harmless the Exchange and all other United States agencies and instrumentalities, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, international agreements, or duly promulgated United States government regulations and all charges and expenses incident thereto which arise out of the following.
 - (1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party regarding items or services provided by contractor.
 - (2) The loss, damage or injury alleged or established to have arisen out of or in connection with items or services provided by contractor, to the extent contractor can be held liable for such loss, damage, or injury in accordance with applicable federal and state law.
 - (3) Contractor is hereby notified that injury and damage claims against the Exchange based on alleged negligence must be brought under applicable federal law, including the Federal Tort Claims Act. The Exchange will give contractor notice of such claims relating to items or services provided by contractor. In the event of litigation, the Exchange is defended by the Department of Justice.
- 7. ASSIGNMENT (Apr 12).** The Assignment of Claims Acts, 31 U.S.C 3727 and 41 U.S.C. 15, are not applicable to amounts due under the Exchange contracts. Contractor may not assign its rights or delegate its obligations under this contract, and the Exchange will neither consent to, nor recognize, any purported assignment. Contractor may request permission from the contracting officer to have contract payments forwarded to a third party. Contractor may request that the contract be novated.
- 8. CONTRACTOR PERSONNEL AND REPRESENTATIVES (Aug 08).**
- a. The contractor will discontinue using any individual in exchange facilities upon contracting officers' written notice that the individual is not acceptable for performance under the contract. Contractor will not use any such person to perform other Exchange contracts without the prior written consent of the contracting officer.
 - b. The contractor will not employ any individual to work in exchange facilities whom we have determined unacceptable under any other Exchange contract without the prior written consent of the contracting officer.
 - c. Contractor personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on the Exchange.
 - d. Contractor will not represent himself/herself to be an agent or representative of the Exchange, another instrumentality, or an agency of the United States.
- 9. TERMINATION BY NOTICE (RETAIL) (Jun 96).** Either party may terminate any and all performance under an individual purchase order, provided such notice is given not less than ten (10) calendar days before performance is required. Notice must be given in writing, to include electronic mail.
- 10. DISPUTES (Dec 07).**
- a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
 - b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.
 - c. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Exchange against the Contractor shall be made by a written decision by the Contracting Officer.
 - d. For contractor claims exceeding \$100,000, the Contractor shall submit with the claim a signed certification that:
 - (1) The claim is made in good faith;
 - (2) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and
 - (3) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Exchange is liable.

- e. The claim must be executed by an individual with authority to bind the Contractor.
- f. The Contracting Officer will mail, or otherwise furnish, a written decision in response to a Contractor claim within the time periods specified by law. Such decision will be final and conclusive unless:
 - (1) Within 90 calendar days from the date of the Contractor's receipt of the final decision, the Contractor appeals the decision to the Armed Services Board of Contract Appeals (ASBCA).
 - (2) Within 12 months from the date of the Contractor's receipt of the final decision, the Contractor brings an action in the U. S. Court of Federal Claims.
- g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, the Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.
- h. Submission of false claims to the Exchange is a violation of federal law and may result in civil and/or criminal penalties. If the Contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, the Contractor will pay the Exchange an amount equal to the unsupported part of the claim and all the Exchange's costs attributable to reviewing that part of the claim.

11. EQUAL EMPLOYMENT OPPORTUNITY (OCT 98).

- a. The contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated by reference.
- b. Contracts or orders in the amount of \$10,000,000 or more will not be made unless the contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.
- c. Additional information can be found on their web site: <http://www.eeoc.gov/policy/index.html>.
- d. EEO posters are available at the following Department of Labor Web sites:
 - DOL Poster page**
<http://www.dol.gov/osbp/sbrefa/poster/main.htm>
 - EEO Poster in Spanish (for black and white printer)**
<http://www.dol.gov/esa/regs/compliance/posters/pdf/eeospbw.pdf>
 - EEO Poster in English (for black and white printer)**
<http://www.dol.gov/esa/regs/compliance/posters/pdf/eeobw.pdf>
 - EEO Poster in English (for color printer)**
<http://www.dol.gov/esa/regs/compliance/posters/pdf/7975epos.pdf>
 - EEO Poster in Spanish (for color printer)**
<http://www.dol.gov/esa/regs/compliance/posters/pdf/eeosp.pdf>

12. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (Dec 07). If orders during a calendar year equal or exceed \$25,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

13. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES (NOV 09). If the contract or the total of all orders issued during a calendar year equals or exceeds \$10,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulation, Part 60-741, which are incorporated herein by reference.

14. CONVICT LABOR (May 89). In connection with the performance of work under this contract, the contractor agrees not to employ any person, undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 USC 4082[c][2] and Executive Order 11755, December 29, 1973.

15. TAXES (May 89). The contractor assumes complete and sole liability for all federal, state and local taxes as applicable to the property, income and transactions of the contractor. The prices charged to the Exchange will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes that are not applicable:

- a. Because of the Exchange's legal status as an instrumentality of the United States Government.
- b. Because of the Exchange's immunity from direct state or local taxation; or
- c. Because of federal, state or local tax exemptions for sales to the Federal Government; or

- d. Otherwise, such as items purchased for export. It will be the sole responsibility of the contractor to explain, to the reasonable satisfaction of the contracting officer, the applicability and amount of any taxes that they have included in the prices charged. The contracting officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.
- e. Distilled spirits contractors, by shipping each order, is certifying that prices charged to the Exchange do not include any direct or indirect state taxes.

16. ROBINSON-PATMAN (Jun 96).

- a. The Exchange is a joint military command of the U.S. Army and the U.S. Air Force. It is a non-appropriated fund instrumentality of the U.S. Government performing governmental functions, and partakes of all the immunities of the U.S. Government. [Standard Oil Company of California v. Johnson, 316 U.S. 481, 62 S. Ct. 1168 (1942) and U.S. v. State Tax Commission of Mississippi, 421 U.S. 599, 95 S. Ct. 1872 (1975)].
- b. The Robinson-Patman Act makes it unlawful to discriminate in price between different purchasers if it may substantially lessen competition or create a monopoly. Inquiries are often received after contractors are requested by the Exchange to offer prices as favorable or better than those offered to their other customers. The Robinson-Patman Act does not apply to sales to the Exchange or other elements of the U.S. Government. Contractors may legally offer the Exchange prices more favorable than they offer to other customers. Neither the offer by the contractor nor the acceptance by the Exchange is a violation of the Robinson-Patman Act. [Champaign-Urbana News Agency, Inc. v. J.L. Cummins News Co., Inc., 632 F. 2d 680 (7th Cir. 1980)].

17. TRADEMARKS (Nov 11). The Exchange is the holder of numerous trademarks including, but not limited to, the Exchange TM, PX [®] and BX TM. All Exchange trademarks are designated by the TM or the [®] symbol, and are the exclusive property of the Exchange. Exchange trademarks may not be reproduced or used in any manner without the prior written consent of the Contracting Officer.

18. MAILING LISTS (Aug 92). Under no condition will contractor sell or otherwise disseminate name and address information on Exchange customers to other persons or firms. The contractor agrees to restrict its use of such information to the performance of this contract.

19. ENVIRONMENTAL PROTECTION (Aug 09).

- a. This clause will apply to any contract in excess of \$100,000, and indefinite quantity contracts estimated to exceed \$100,000 in one year; however, it will not apply to use of facilities located outside the United States.
- b. Unless this contract is exempt, by acceptance of this contract, contractor (and, where appropriate, the subcontractor) stipulates:
 - (1) that any facility to be used in the performance of any nonexempt contract or subcontract is not listed on the EPA list of Violating Facilities as of the date of contract award;
 - (2) its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry reports, and information, as well as all other requirements specified in Sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder;
 - (3) that as a condition of award of contract, contractor shall promptly notify the contracting officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or delegatee, indicating that a facility to be used for the contract is under consideration to be listed on the EPA List of Violating Facilities;
 - (4) its agreement to include the criteria and requirements in subparagraphs (1) through (4) in every nonexempt subcontract, and to take such actions the Government may direct to enforce such provisions.

20. DEFAULTS (Oct 11).

- a. The contracting officer, by written notice of default, may terminate any bilateral contract in whole or in part for contractor's failure to:
 - (1) Ship/deliver conforming items or provide conforming services within the time specified.
 - (2) Timely comply with other contract requirements including, e.g., the obligation to provide disposition instructions, repair or replace defective items.
 - (3) Make progress such that performance of the contract is endangered, provided contractor does not cure such after receipt of notice from the contracting officer specifying such failure.

- b. In the event of default, the contracting officer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of, or contract to purchase, goods or services in substitution for those due from contractor. Substitute items need not be identical, or the same or similar, as long as they meet the same general needs of the Exchange at the time of cover, as determined by the contracting officer.
- c. Except as to performance terminated in accordance with the above, contractor is obligated to continue to perform the contract.
- d. Time is of the essence in performance of the Exchange contracts.

21. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAR 12).

- a. The Contractor will not acquire for use in the performance of this contract any merchandise, equipment, supplies or services originating from, processed in, or transported from or through, the countries prohibited from commerce by the U. S. Government. A current list of restricted countries is available on the U.S. Department of Treasury webpage at <http://www.treasury.gov>. This restriction includes merchandise, equipment, supplies or services from any other country that is restricted by law, regulation or executive order at any time during performance of the contract.
- b. The Contractor agrees to insert the provisions of this clause, including this paragraph, in its subcontracts.

22. LOGISTICAL SUPPORT. Contractor technical representatives performing services under the contract who qualify under provisions of AR700-32/AFR400-15 and command directives, maybe furnished logistical support provided such support is consistent with the terms of international agreements entered into by the United States with the government of the nation concerned and such support would not place the privileges and immunities of the United States in jeopardy. The provision and the extent of such support rests with the military commander concerned and not with the Exchange, and the contract in no way guarantees that such support will necessarily be provided.

23. HAZARDOUS GOODS.

- a. Contractor will mark all packages/cartons of hazardous/dangerous goods to meet the U.S. Department of Transportation (DOT) and the United Nations (UN) rules and regulations. Classify these goods using the Exchange Hazardous Materials Classification Sheet (Exchange Form 3900-4). Complete all applicable blanks with the required information. Return the completed form, attached to a Material Safety Data Sheet (MSDS), to the contracting officer. Material Safety Data sheets must contain the proper shipping name, class/division, UN number, packing group (when applicable) and the flash point (for class 3 dangerous goods).
- b. Packing requirements can be found in the following regulations.
 - International Maritime Dangerous Goods (IMDG)
 - International Air Transport Association (IATA)
 - Code of Federal Regulations (CFR), Title 49, Transportation.

24. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS. By supplying merchandise to the Exchange, vendor warrants that it has complied with all applicable laws and regulations governing the manufacture, sale, packing, shipment and delivery of the merchandise. Vendor certifies that it, its subcontractors and its suppliers, have complied with applicable labor laws, including but not limited to the Fair Labor Standards Act (FLSA). Vendor will notify subcontractor that the Exchange requires that merchandise will be made in compliance with the FLSA and will provide subcontractors with information regarding the requirements of FLSA. If requested by the contracting officer, vendor will promptly provide subcontractor names and manufacturing sites. Vendor will have an effective monitoring program for it, and its subcontractors and suppliers, and will display Wage and Hour Division posters in workers' language and other appropriate materials, provided by US Department of Labor (DOL) through the Exchange, at US work sites inviting workers to make inquiries about the Fair Labor Standards Act.

25. CHOICE OF LAW AND FORUM (OCT 11). This contract shall be construed and interpreted in accordance with the Federal laws of the United States of America.