



## TERMS AND CONDITIONS

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## 1. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the following meanings:

- 1.1. “**Authorized Purchasing Representative**” means the individual whose name appears on the face of the Purchase Order under “Buyer Name”, or who is otherwise designated in writing by Buyer as its authorized purchasing representative.
- 1.2. “**Buyer**” means SAAR, or any subsidiary, division, affiliate, successor or assign of SAAR, doing business with Seller pursuant to these Terms and Conditions.
- 1.3. “**Buyer’s Supplier Portal**” means Buyer’s secure, password protected website, located at <https://saarcorp.com/>.
- 1.4. “**Delivery Date(s)**” means the date by which Products or Services covered by a Purchase Order are required to be delivered to Buyer
- 1.5. “**DFARS**” means Department of Defense Federal Acquisition Regulation Supplement.
- 1.6. “**FAR**” means Federal Acquisition Regulation.
- 1.7. “**Government**” means the Government of the United States unless otherwise specified.
- 1.8. “**Intellectual Property**” means patented and unpatented inventions and discoveries, pending patent applications, copyrighted works and copyrightable subject matter in published works and unpublished works, pending copyright registration applications, computer software data, databases and documentation thereof, trade secrets and other confidential information, know-how and proprietary processes, business methods, formulae, designs, models, technical data and methodologies, trademarks, trade names, and other similar intangible assets.
- 1.9. “**Lead Time**” means the total minimum lead time required to deliver Products or Services, as agreed by the Parties. Lead Time from the date of acceptance of the Purchase Order by Seller determines the Delivery Date, unless a Delivery Date is specified in the Purchase Order.
- 1.10. “**Long Term Supply Agreement**” or “**LTSA**” means an agreement between the Parties that provides for Buyer to purchase Products or Services from Seller through the release of Purchase Orders against that Long Term Supply Agreement. Each LTSA incorporates these Terms and Conditions by reference unless stated otherwise in the LTSA.
- 1.11. “**Parties**” means Buyer and Seller collectively.

- 1.12. **“Products”** means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies described in the Purchase Order and sold to Buyer by Seller pursuant thereto.
- 1.13. **“Property/Tooling”** means all property and tooling (including, but not limited to, all materials, dies, jigs, tools, patterns, molds, apes, gauges, models, equipment, fixtures, software, tools and other items) whether furnished or made available by Buyer or Buyer’s customers or fabricated, acquired, or otherwise provided by Seller or its subcontractors, for the use in the performance of the Purchase Order.
- 1.14. **“Proprietary Information”** means all information or that is confidential, business sensitive, or proprietary in nature about Buyer, its subsidiaries or its other affiliates, or their respective businesses, assets, plans, or activities, including, without limitation, trade secrets, names and expertise of employees and consultants, know-how, formulae, processes, ideas, inventions (whether or not patentable), schematics, and other technical, business, financial, company and product development information and data (whether or not reduced to writing and regardless of the medium in which maintained), and any other confidential or non-public information that is disclosed or made available to Seller or its Representatives (as defined below) by or on behalf of Buyer or any of its subsidiaries or other affiliates, along with all copies, notes, analyses, compilations, studies, or other materials prepared by or on behalf of Seller or any of its Representatives that contain or reflect such information. The existence and terms of any LTSA or Purchase Order shall be considered Proprietary Information. Notwithstanding the foregoing, Proprietary Information shall not include information that: (i) is in the public domain as of the effective date of any LTSA or comes into the public domain other than through the breach of any obligation by Seller or any of its Representatives; (ii) is lawfully obtained by Seller from a third party without breach of any obligation and otherwise not in violation of the rights of Buyer or any of its subsidiaries; (iii) is known to Seller at the time of disclosure as shown by its written records in existence at the time of disclosure; or (iv) is independently developed by Seller; provided, that Seller can demonstrate that it did so without making any use of any Proprietary Information or other information disclosed by or on behalf of Buyer in confidence to any third party.
- 1.15. **“Purchase Order”** means a paper or electronic document issued by Buyer to Seller to initiate the ordering of Products or Services, including any changes, modifications, or supplements thereto. The term Purchase Order may include a Purchase Order issued against a LTSA.
- 1.16. **“Seller”** means the party to whom Buyer is issuing the Purchase Order.
- 1.17. **“Services”** means those services described in the Purchase Order to be provided by Seller to Buyer, including any goods, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of such services.

1.18. **“Specifications”** means, with respect to each Product or Service, the written requirements for the manufacture, test, qualification, workmanship of such Product or the performance of such Service, including but not limited to descriptions, designs drawings, layouts, plans, parts lists, process and material specifications, inspection and test procedures, etc., as they may be modified by Buyer from time to time.

1.19. **“Supplier Code of Conduct”** means the Supplier Code of Conduct (the “Code”) that has been promulgated by SAAR, sets forth certain standards and principles applicable to each entity or individual that provides goods or services to SAAR, with regard to ethical and responsible business practices to be observed by each entity or individual. The Code is located at \_\_\_\_\_.

1.19 **“Terms and Conditions”** means these SAAR Corporation, Terms and Conditions of Purchase, as they may be modified or amended from time to time.

## 2. **SELLER’S OBLIGATIONS**

2.1. Seller shall comply with the terms of the Purchase Order, which terms include, but are not limited to:

- (i) these Terms and Conditions;
- (ii) the terms of any applicable LTSA;
- (iii) requirements stated on the face of the Purchase Order or expressly incorporated therein by reference on the face of the Purchase Order;
- (iv) the Specifications, including but not limited to, those provided by Buyer or listed in Buyer’s Purchase Order, or in a statement of work approved by Buyer, and retrieved from Buyer’s Supplier Portal in the review item documentation location;
- (v) quality requirements, including, but not limited to those referenced on a Purchase Order;
- (vi) Property/Tooling requirements set forth in Buyer’s Purchase Order or otherwise communicated by Buyer; and
- (vii) shipping instructions, including, but not limited to, those referenced on a Purchase Order.
- (viii) The Supplier Code of Conduct.

The documents described in (i) through (viii) above are hereby incorporated by reference into the Purchase Order.

- 2.2. The terms of the Purchase Order are limited to the terms identified above. No additional or different terms shall be binding on Buyer, and Buyer objects to any additional or different terms.
- 2.3. Upon receipt of a Purchase Order, Seller shall provide notice of acceptance or rejection of the Purchase Order to Buyer in accordance with instructions set forth on Buyer's Supplier Portal or on the Purchase Order. If such notice is not received within five business days of the Purchase Order, the Purchase Order shall be deemed to have been accepted. Notwithstanding the above, Seller shall accept all Purchase Orders that are consistent with any delivery volumes and schedules set forth in Attachment B or any revision thereof. If Seller rejects a Purchase Order, Purchaser must include the reason for such rejection to Buyer in writing with notice of the rejection.
- 2.4. Seller shall ensure Products are engineered and manufactured, and Services are provided, with the degree of skill, diligence, attention, and care consistent with generally accepted industry standards applicable to similar products or services, and in accordance with any standards set out in the Specifications. Seller shall further ensure that all of its employees and subcontractors involved in performance of its obligations under the Purchase Order are made aware of these and other obligations of Seller that affect the form, fit, or function of Products and Services delivered pursuant to the LTSA or Purchase Order, and the importance of full compliance with these requirements.

### **3. ORDER OF PRECEDENCE**

Any inconsistency between the terms of the Purchase Order and the terms of any other document regarding the subject matter of the Purchase Order shall be resolved by giving precedence in the following order:

- (i) terms expressly stated on the face of the Purchase Order (excluding documents incorporated by reference);
- (ii) terms expressly stated on the face of any applicable LTSA or (excluding documents incorporated by reference);
- (iii) these Terms and Conditions (excluding documents incorporated by reference or referenced herein);
- (iv) terms included in any Statement of Work, if applicable;
- (v) any other documents incorporated by reference or referenced on a Purchase Order, LTSA, or these Terms and Conditions.

#### **4. BUYER AUTHORIZATION**

- 4.1. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the Purchase Order.
- 4.2. Buyer's representatives other than Buyer's Authorized Purchasing Representative may release to Seller information applicable to the Purchase Order. If Seller believes that information so provided to Seller changes the contractual requirements or performance of the Purchase Order, Seller shall not act on that information and it shall not be contractually effective until Seller receives written contractual direction to act from Buyer's Authorized Purchasing Representative.

#### **5. DELIVERY, SHIPPING, TITLE AND RISK OF LOSS**

- 5.1. The contractually required Delivery Dates are (i) as set forth in the Purchase Order or (ii) if no Delivery Date is specified in the Purchase Order, the Delivery Date is the date determined by adding Lead Time to the date of acceptance of the Purchase Order or the date the Purchase Order was required to have been accepted under clause 2.3 hereof, whichever comes first. Products or Services must be received at the location(s) designated by Buyer not later than such Delivery Dates regardless of the agreed upon shipping terms. The Parties agree that time is of the essence in Seller's performance of a Purchase Order and Seller shall deliver the Products or perform the Services by the Delivery Date.
- 5.2. Notwithstanding the Changes clause of these Terms and Conditions, Buyer may make changes to the delivery schedules of the Purchase Order, without price adjustment or cost impact, provided that such new Delivery Dates are consistent with Lead Time. Modified Delivery Dates inside the applicable Lead Times shall be considered need dates ("Need Date(s)"). If Seller agrees to the Need Date, then the Need Date shall be considered a Delivery Date.
- 5.3. Notwithstanding any provision herein to the contrary, including, but not limited to, the Termination for Convenience clause and the Changes clause, in no event shall Buyer be liable for any costs or expenses incurred in connection with or as a result of: (i) procurement of materials in advance of Lead Times in effect at the time of such material procurement or (ii) commencement of production in advance of Lead Time for the Product. Seller understands and agrees that any forecast information that Seller may receive from Buyer is for planning purposes only and shall not create an obligation on the part of Buyer to issue Purchase Orders for such Products or Services.
  - (i) Without affecting any other right of Buyer, Buyer may cancel any Purchase Order, in whole or in part, without liability to Seller, at any time prior to the commencement of Lead Time.

- (ii) Shipping terms shall be as designated on the Purchase Order. Seller must ship strictly in accordance with the instructions and requirements set forth in any shipping instructions provided by Buyer.
- (iii) Risk of any loss or damage of Products occurring before receipt at the specified delivery point in accordance with the Purchase Order shall be Seller's responsibility. Title and risk of loss shall pass to Buyer upon receipt at the specified delivery point in accordance with the Purchase Order (except as otherwise specified within the Purchase Order); however, passing of title shall not relieve Seller of any other obligations under the Purchase Order.
- (iv) All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in the Purchase Order. Unauthorized over-shipments may be returned at Seller's expense.
- (v) Whenever it appears Seller will not meet a Delivery Date, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay, including the expenditure of premium time and most expeditious transportation
- (vi) If Seller is unable to meet the Delivery Date for any reason, other than a change directed by Buyer, Buyer shall have the option to: (i) cancel the Purchase Order, in whole or in part, or (ii) fill such Purchase Order, or any portion thereof, from sources other than Seller and to reduce Seller's Purchase Order quantities accordingly at no increase in unit price, without any penalty to Buyer. Further, if Seller fails to meet a Delivery Date and such delay is not as a result of an Excusable Delay, then, commencing one week after the Delivery Date, Buyer shall have the right to claim, in addition to any damages or costs to which Buyer may be entitled, and Seller shall pay by way of liquidated damages to Buyer, 2.5% of the price of the Products or Services subject to the delay for each week after the Delivery Date that the delivery is late, pro-rated for partial weeks up to delivery, up to a maximum of 10% of the total price for all late Products or Services.
- (vii) Seller shall also be responsible for any additional costs associated with such requirements and any other costs or damages which Buyer incurs or for which Buyer is responsible as a result of late deliveries including but not limited to any fees, damages, or penalties charged to Buyer by Buyer's customer.
- (viii) THIS DELIVERY, SHIPPING, TITLE AND RISK OF LOSS CLAUSE DOES NOT LIMIT BUYER'S RIGHTS OR REMEDIES UNDER ANY OTHER PROVISION OF THIS ORDER OR AS PROVIDED BY LAW OR EQUITY.

## **6. PACKAGING AND PACKING**

Seller shall use all reasonable and prudent measures, consistent with industry standards, to protect the Goods from any damage or from otherwise being rendered noncompliant with the Seller's warranty obligations hereunder, unless otherwise stated in the Purchase Order.

Without limiting the foregoing, Seller shall comply with International Standards for Phytosanitary Measures (ISPM) 15 (packaging material treatment requirements) and NAS412 (Foreign Object Damage Prevention) as applicable. Any costs to Buyer resulting from failure to comply with packaging requirements will be charged to Seller.

## **7. ACCEPTANCE AND REJECTION, NONCONFORMING GOODS**

- 7.1. Seller shall only tender Products to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all the requirements of the Purchase Order.
- 7.2. Unless otherwise specified in the Purchase Order, Buyer's final inspection and acceptance shall be at destination. Notwithstanding (i) delivery of; (ii) payment for, or (iii) use thereof, Products and Services shall be subject to final inspection and acceptance by Buyer and, subject to any contrary notice from Buyer, acceptance shall be deemed to have taken place one hundred eighty (180) calendar days after receipt by Buyer of such Products or Services (the "Inspection Period"), unless otherwise specified in the Purchase Order or unless there is a change in Buyer's timetable for using the Products or Services that is beyond Buyer's reasonable control, including but not limited to a delay by a customer of Buyer in scheduled delivery of Buyer's products that incorporate the Products or Services, in which case the Inspection Period shall be extended for the length of such delay plus ninety (90) days. Transfer of title to Buyer shall not constitute acceptance.
- 7.3. During the Inspection Period, Buyer may, with respect to Products that do not conform in any respect to the Purchase Order: (i) reject all or a portion of such nonconforming Products and require delivery of conforming Products ; (ii) accept all or a portion of the nonconforming Products with a price reduction for the cost of repair or diminution of value; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Products to comply in all respects the terms of the Purchase Order (the "Corrections"). Seller shall be liable to Buyer for all costs incurred or suffered by Buyer in connection with the nonconformance of the Products or Services in question, including but not limited to the costs of substitute Products or Services, costs of labor and material to make Corrections (or to have Corrections completed by a third party), shipping costs, expediting fees, late fees or other pass-through charges imposed by Buyer's customer, contract breakage fees, storage and material handling fees, and net costs resulting from having to scrap any Products (all such costs, fees and similar obligations of Buyer due to such nonconformance, "Defect Costs"). Seller shall be subject to Buyer's return material procedures as set forth in Buyer's Supplier Portal.

- 7.4. Within thirty (30) days of Seller's receipt of Buyer's notification of a nonconformity, Seller shall investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions and formulate a corrective action plan acceptable to Buyer. In addition, within five (5) business days of Buyer's request, Seller shall make available to Buyer all records related to conformity of the Products or Services in question with the Purchase Order, including but not limited to all manufacturing records, work instructions, records of all inspections and tests, material quality and content information, shipping and storage information, as well as any records related to the suitability and qualification of Seller's facilities and personnel to produce, test and deliver the Products or Services in question in accordance with the Purchase Order (all such records, the "Seller Data").
- 7.5. Neither inspection and acceptance of any Products or Services by Buyer nor failure by Buyer to inspect and accept or reject Products or Services, shall be deemed to alter or affect the obligations of Seller under the Purchase Order or the rights of Buyer and its customers under any Purchase Order, these Terms and Conditions, any other agreement then in effect or as may be provided by law or equity.

## **8. INVOICING AND PAYMENT**

- 8.1. Buyer shall pay Seller the price set forth in the Purchase Order for the Products received. Unless otherwise set forth in the LTSA or Purchase Order, payment terms will be net 120 days, payable on Buyer's next regular payment date. Payment due dates, including discount periods, will be calculated from the date of receipt of Products or the date specified for delivery of Products, whichever is later, under the terms and conditions of the Purchase Order.
- 8.2. Seller shall submit a separate invoice for each shipment and shall include the following information taken from the Purchase Order: Purchase Order number, item number, part number, quantity, unit price, extended item price, and any discount payment terms. Seller's invoice shall also include Seller's vendor number, phone number and address; the invoice number, invoice date, total amount due, ship date, and shipper number or packing slip number. No invoice shall be issued prior to shipment of Products.
- 8.3. In the event that the price or terms set forth in any invoice differ from or are inconsistent with the price and terms set forth in the Purchase Order, the price and terms set forth in the Purchase Order control and any different or inconsistent terms are deemed rejected and not part of the agreement between Buyer and Seller.

## **9. PRICE WARRANTY**

Seller warrants that the price does not exceed the price charged by Seller to any other customer purchasing the same or similar products in like or smaller quantities/volumes under

similar conditions during the period of the Purchase Order. Seller shall reimburse Buyer promptly upon the discovery of a violation of this warranty in the amount of the difference between the lower price charged and that charged Buyer.

## **10. CHANGES**

- 10.1. Buyer's Authorized Purchasing Representative may at any time by written notice to Seller make changes to the Purchase Order, including changes with respect to: (i) the Specifications; (ii) method of shipment, packaging, or packing; (iii) place of delivery; (iv) method or manner of performance or quality requirements; (v) quantity of Product (increase or decrease); (vi) delivery schedule(s); or (vii) Customer flow down requirements ("Changes"). Seller shall immediately comply with such Change(s) upon receipt of notice, irrespective of the failure of the Parties to agree to an equitable adjustment.
- 10.2. Except as otherwise expressly set forth in the Purchase Order, if the Change causes an increase or decrease in the cost or time required to perform the Purchase Order, an equitable adjustment may be made in the price or delivery schedule and the Purchase Order modified in writing accordingly.
- 10.3. If Seller believes that Buyer's conduct constitutes a Change, Seller shall notify Buyer's Authorized Purchasing Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Seller shall take no action to implement any such Change without written direction from Buyer's Authorized Purchasing Representative.
- 10.4. Any claim for adjustment to cover increased costs shall be unconditionally waived unless asserted in writing and delivered to Buyer within fifteen (15) calendar days after the date of the Authorized Purchasing Representative's written notice resulting in the change.
- 10.5. If Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- 10.6. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- 10.7. Failure to agree to any adjustment shall constitute a dispute within the meaning of the Disputes clause hereof. However, the existence of a dispute shall not excuse Seller from proceeding with the Purchase Order as changed.

## **11. STOP WORK**

- 11.1. Buyer may, at any time, by written direction to Seller (a "Stop Work Order"), require Seller to stop all or any part of the work called for by the Purchase Order, for a period of up to one hundred and twenty (120) calendar days and for any further period to which the Parties may agree at each such time. Seller shall immediately comply with the terms of any Stop Work Order at no cost to Buyer.
- 11.2. To the extent a Stop Work Order is canceled by Buyer or the period of work stoppage specified by the Stop Work Order or any extension thereof expires, Seller shall resume work and the Parties will agree upon a reasonable adjustment to the delivery schedule.

## **12. LABOR DISPUTES**

Whenever Seller has knowledge that any actual or potential labor dispute involving Seller or any tier of Seller's suppliers or subcontractors is delaying or threatens to delay timely performance of the Purchase Order, Seller shall immediately give notice to Buyer, together with all relevant information, including, but not limited to, nature of the dispute, estimated duration, labor organizations involved, and estimated impact on Seller's performance of the Purchase Order. In addition, Seller shall notify Buyer at least ninety (90) calendar days prior to the expiration of any labor agreement.

## **13. ADEQUATE ASSURANCE OF PERFORMANCE**

- 13.1. If at any time Buyer has reasonable grounds for insecurity as to Seller's full, timely, and sustained performance in accordance with the terms of the Purchase Order, Buyer may request, by written notice to Seller, adequate assurance in writing that Seller is able and willing to perform all of its respective obligations under the Purchase Order.
- 13.2. If Seller does not provide adequate written assurance within fifteen (15) calendar days after Buyer's written notice and request, Buyer may, at its option, treat the Purchase Order as materially breached by Seller.

## **14. WARRANTY**

- 14.1. Seller warrants to Buyer that all Products delivered under the Purchase Order will: (i) be free from defects in materials, workmanship, and manufacturing processes; (ii) be suitable for the purposes intended whether expressed or reasonably implied; (iii) conform to the terms of the Purchase Order, including but not limited to the Specifications; (iv) be free from defects in design, unless the design was furnished by Buyer; and (v) be free of all liens and encumbrances. Buyer may inspect all work in progress and materials used manufacturing Products or providing Services at all reasonable times and places whether during or following manufacture. Seller shall

notify Buyer as promptly as possible but in any event within twenty-four (24) hours of the discovery of any defects, latent or otherwise, in Products delivered pursuant to a Purchase Order. This warranty shall run to Buyer and its successors, assigns and customers.

- 14.2. If any Product fails to comply in any respect with the warranties set forth above, Buyer shall have the option, in its sole discretion, at Seller's expense, to (i) return such Products and debit Seller's account or demand a refund; (ii) require Seller to promptly make all corrections necessary to enable such Product to comply in all respects with such warranties. Seller shall be liable to Buyer for Defect Costs related to such failure to comply with the warranties set forth above and Buyer's actions pursuant to this paragraph. In addition, within five (5) business days of a request by Buyer, Seller shall make all Seller Data in connection with the Products in question available to Buyer.
- 14.3. In addition to Defect Costs, Seller shall be responsible for and shall save and hold Buyer harmless from, and Buyer shall have the right to recover from Seller, any other loss or damage (including consequential damages) that Buyer may suffer, or any other costs that Buyer may incur, due to the breach of these warranties. Seller acknowledges that the Products may be incorporated in aircraft parts manufactured by Buyer. Seller further acknowledges that, in the event those aircraft parts are subject of recall, service letter, service bulletin, airworthiness directive or similar actions as a result of any defects in Products delivered by Buyer or other breach of warranty, Seller will indemnify Buyer for any losses related thereto.
- 14.4. The rights and remedies of Buyer set forth in this Warranty clause shall be in addition to, and not in lieu of, any other rights or remedies Buyer may have under the Purchase Order, or in law or equity.

## **15. TERMINATION FOR DEFAULT**

- 15.1. Buyer may, by written notice to Seller, terminate the Purchase Order in whole or in part, if Seller:
- (i) Fails to deliver conforming Products or Services on time or to perform any other obligation under the Purchase Order within the time specified in the Purchase Order or any extension granted in writing by Buyer;
  - (ii) Fails to make progress so as not to endanger performance of the Purchase Order or to perform any of the other provisions of the Purchase Order and does not cure such failure within a period of fifteen (15) calendar days after receipt of the notice from Buyer specifying Seller's failure to perform;
  - (iii) Fails to provide adequate assurances of performance in accordance with Article 13 of these Terms and Conditions; or

- (iv) Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business.

15.2. If Buyer terminates the Purchase Order in whole or in part pursuant to this Article 15, Buyer shall have no liability in relation to those Products not delivered and accepted prior to the termination. Buyer may obtain, under the terms and in the manner, Buyer considers appropriate, Products similar to those terminated, and Seller will be liable to Buyer for any excess costs for re-procurement of those Products. However, Seller shall continue the work not terminated. Seller shall also be responsible for any delay and disruption costs incurred by Buyer, and any other costs or damages that Buyer incurs or for which Buyer is responsible as a result of Seller's default, including without limitation any penalties or damages required to be paid to Buyer's customer or any government authority.

15.3. If the failure to perform is caused by an Excusable Delay, as described in Article 17 herein, Seller shall not be liable for any excess costs of re-procurement, according to the terms of that Article.

15.4. If the Purchase Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Products; (ii) partially completed Products, supplies and materials (including raw material), parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for the terminated portion of the Purchase Order; (iii) Property and Tooling; (iv) Intellectual Property; and (v) Seller Data. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest, including any Property and Tooling and Intellectual Property.

15.5. If, after notice of termination under this Section, it is determined that Seller was not in default, then the rights and obligations of the Parties shall be determined as if the notice of termination had been issued pursuant to the Termination for Convenience section.

## **16. TERMINATION FOR CONVENIENCE**

16.1. Buyer may, at any time, terminate all or part of the Purchase Order, for its convenience upon written notice to Seller.

16.2. Upon receipt of a written notice of termination, except as directed by Buyer, Seller shall immediately proceed with the following obligations and any other actions directed or authorized by Buyer's Authorized Purchasing Representative, regardless of any delay in determining the amounts due under this Termination for Convenience clause:

- (i) cease terminated work as of the date specified in the notice;
- (ii) place no further subcontracts or orders for materials, services or facilities except as necessary to complete any continued portion of the Purchase Order;
- (iii) prepare and submit to Buyer an itemization of all completed and partially completed Products or Services;
- (iv) deliver to Buyer at the pre-termination Purchase Order price any and all Products that were ordered by Buyer and completed consistent with Lead Time prior to the date of termination;
- (v) if directed by Buyer, deliver any work in process or materials; and
- (vi) complete performance of any non-terminated work.

16.3. In the event that Buyer terminates the Purchase Order for Convenience after performance of the work has commenced, Buyer will compensate Seller for the actual and reasonable work in process costs incurred by Seller with respect to Products based on the appropriate level of completion consistent with Lead Time,. Seller shall undertake efforts to mitigate its own and Buyer's liabilities under this Section, including providing prompt notice to all sub-tier contractors. In order to receive compensation, Seller's termination claim must be submitted within ninety (90) days from the effective date of the termination.

16.4. Buyer shall not be liable to Seller for any costs or damages except as described above, and in no event will Buyer be liable for lost or anticipated profits, unabsorbed overhead or other indirect costs or for any sum in excess of the price attributable to the portion of the Purchase Order terminated.

## **17. EXCUSABLE DELAY**

17.1. If the delivery of any Product or the performance of any obligation under a Purchase Order is delayed as a result of causes that are, at one and the same time, unforeseeable, unavoidable, outside Seller's control, and without its fault or negligence, or that of any tier of its suppliers, and provided that Seller provides Buyer, within three (3) days of Seller's learning of such cause, written notice to the effect that a failure or delay by Seller will occur or has occurred ("Excusable Delay"), the schedule for delivery of such Product or performance of such obligation may be revised as determined by Buyer. In the event that Buyer's performance under any customer order or other obligation is jeopardized in any way by Seller's failure or delay in performance due to Excusable Delay, Buyer may cancel its purchase of affected Products or Services without liability to Seller. Notwithstanding the foregoing, Buyer may terminate all or any portion of a Purchase Order affected by Excusable Delay if Seller is unable to

resume normal performance within thirty (30) days of commencement of the cause for the Excusable Delay.

- 17.2. Seller shall give Buyer prompt notice in writing when it appears that an Excusable Delay will delay the furnishing of Products or Services, and Seller shall provide a recovery plan acceptable to Buyer within ten (10) calendar days after submission of such notice. Notwithstanding the occurrence of an Excusable Delay, Seller shall use its best efforts to mitigate and resolve the effects of the Excusable Delay, and Seller shall submit a recovery plan acceptable to Buyer.

## **18. BUYER'S ASSISTANCE**

In the event that Buyer or Buyer's customer determines that Seller's delay or failure to perform under the Purchase Order requires Buyer's or Buyer's customer's technical or manufacturing assistance, Buyer may provide technical or manufacturing assistance at Seller's cost, at such level and scope, and for such period of time, as is reasonably necessary to remedy or mitigate the risk to Buyer or Buyer's customer's production system(s) or schedule(s). This Buyer Assistance clause does not limit Buyer's rights or remedies under any other provision of the Purchase Order or as provided by law or equity.

## **19. INSPECTION AND AUDIT RIGHTS**

Buyer and representatives of Buyer's customer shall have the right to inspect all premises where the Purchase Order is being performed and the right to review, inspect and test all Products and Services, and all related supplies, components, material and workmanship, and to review all Seller Data, at all places and times including, when practicable, during the period of manufacture or performance and before shipment. If any such inspection or test is required to be made on the premises of Seller or any tier of Seller's suppliers or subcontractors, Seller shall furnish and require such suppliers and subcontractors to furnish, without additional charge, access to all reasonable facilities, including appropriate office space and assistance necessary for a safe and convenient inspection, test or review. The rights provided for in this Section 19 shall also be granted by Seller to representatives of any governmental agency having regulatory or oversight authority with respect to Buyer or to the Products or services provided by Seller.

## **20. PROPERTY AND TOOLING**

Except as otherwise specified in the Purchase Order, Buyer or Buyer's customer, as applicable, shall own and retain title to: (i) any and all Property and Tooling furnished or made available by Buyer or Buyer's customers for use in the performance of the Purchase Order; and (ii) any and all Tooling fabricated, acquired or otherwise provided by Seller or its suppliers or contractors for use in the performance of this Purchase Order. Seller shall not use such Property or Tooling other than in the performance of the Purchase Order without Buyer's prior written consent. Seller shall bear all risk of loss, damage or destruction of such Property and Tooling while it remains in Seller's possession, custody or control and Seller shall submit a current inventory of

such Property and Tooling at Buyer's request. Buyer reserves the right to audit and inspect the Property and Tooling inventory at any time. Upon completion, expiration or termination of the Purchase Order, Seller shall comply with Buyer's direction regarding the transfer, removal, delivery, retention or destruction of such Property and Tooling.

## **21. INDEMNIFICATION**

In addition to any other provision of this Purchase Order, Seller shall indemnify, save, defend and hold harmless, Buyer, its affiliates and each of their officers, employees, directors, agents, shareholders, and subcontractors from any claims, demands, actions, liabilities, losses, costs, or expenses, including reasonable attorney's fees, arising from any (i) negligence of Seller or its sub-tier suppliers or contractors, (ii) breach of the terms of the Purchase Order, or (iii) other act or omission of Seller related to the performance of the Purchase Order, including, without limitation any relating to or arising out of any sickness, injury or death of Seller's employees or contractors. Buyer may supersede in the defense of any claim subject to this indemnity and assume and conduct the defense in its sole discretion. In such instance, Seller shall be relieved of the cost of such defense, but not the cost of any settlement or damages. Buyer will not enter into a settlement of any such claim without Seller's consent, which shall not be unreasonably withheld.

## **22. INSURANCE**

22.1. Without limitation of Seller's indemnification obligations hereunder, irrespective of the place of performance, Seller, at its own expense, shall procure and keep in force the following insurance coverages in the minimum amounts indicated:

- (i) Commercial General Liability coverage, written on an "occurrence" basis with a combined single limit of at least \$2,000,000 per occurrence, and \$4,000,000 in the aggregate, for bodily injury and property damage in a form providing coverage of not less than a standard commercial general liability policy;
- (ii) Aviation Liability coverage, including products and completed operations liability, covering bodily injury and property damage, in an amount not less than \$100,000,000 per occurrence arising or resulting from the performance of the Purchase Order;
- (iii) Worker's Compensation coverage for all of its employees and representatives as required by the laws of the state(s) or country, as applicable, in which the work is performed; and
- (iv) Comprehensive Automobile Liability – Bodily injury/property damage covering all vehicles used in connection with the Products in the amount of \$1,000,000 combined single limit each occurrence.

22.2. All insurance shall be procured from insurers licensed to provide insurance in the state(s) or country, as applicable, in which the work is performed, and each insurer (including reinsurers) with a minimum A.M. Best's rating of A VII or Standard & Poor's rating of A. All of Seller's insurance coverages shall be primary and without contribution from any insurance coverages that may be otherwise carried by Buyer.

22.3. Seller shall provide Buyer with certificates of insurance evidencing that the required minimum coverage is in effect and that Buyer is named as an additional insured, provide a waiver of subrogation clause in favor of Buyer, and provide that all coverage provided by Buyer shall be primary, which certificates shall be renewed at the beginning of each calendar year. Such insurance shall not exclude the actions of any subcontractor that Seller may utilize under the Purchase Order. The insurance provided by Seller hereunder shall have no effect on any obligations imposed upon Seller under the Purchase Order. Seller shall notify Buyer within ten (10) days of any changes in its insurance coverage.

### **23. INTELLECTUAL PROPERTY**

23.1. If the Purchase Order is issued in support of a procurement other than under a Government subcontract: (i) Seller shall retain title to any Intellectual Property authored or developed by Seller prior to the date of the Purchase Order that relates to the Products or Services delivered under the Purchase Order, and Seller hereby grants Buyer a non-exclusive royalty-free, irrevocable, non-terminable, transferable, worldwide right and license to practice and use, and to license others to practice and use such Intellectual Property to the extent necessary to make, have made, sell, offer for sale, or use any articles, processes, services or inventions incorporating or embodying such Intellectual Property to the extent that such Intellectual Property would interfere with Buyer's, its subcontractors' or its customers' use and enjoyment of the Products or Services.

23.2. Buyer shall own and Seller hereby acknowledges that any Intellectual Property invented, authored, created, acquired, developed, or first reduced to practice in the performance of the Purchase Order, including any improvement or advancement by Seller of any Buyer-provided design or process, shall be owned exclusively by Buyer, and Seller hereby assigns such Intellectual Property to Buyer and further agrees to: (i) execute any and all documents necessary and requested by Buyer to perfect Buyer's title in such Intellectual Property; (ii) obligate Seller's employees and contractors involved in the invention or development of such Intellectual Property, including, but not limited to, inventor's declarations and assignments of all right, title and interest that such employees or contractors may have in such Intellectual Property. Buyer hereby grants Seller a limited non-exclusive, royalty-free, worldwide right and license to use such Intellectual Property for the sole purpose of fulfilling its requirements and responsibilities under the Purchase Order.

23.3. Seller shall indemnify, defend and hold harmless Buyer, its affiliates, and any customer of Buyer or of Buyer's customer from and against any and all claims, suits, actions, awards, liabilities, damages, costs related to any actual or alleged infringement of any United States or foreign Intellectual Property rights (including, but not limited to any right in a patent, copyright, industrial design or based upon misappropriation or wrongful use of information or documents) arising out of the manufacture, sale or use of the Products or Services by Buyer, or by any customer of Buyer or of Buyer's customers, and shall duly notify Buyer of any such claim, suit or action and Seller shall, at its own expense, fully defend any such claim, suit or action on behalf of Buyer or any customer of Buyer or Buyer's customers. Buyer may supersede in the defense of any claim and assume and conduct the defense in its sole discretion. In such instance, Seller shall be relieved of the cost of such defense, but not the cost of any settlement or damages. Buyer will not enter into the settlement of any such claim without Seller's consent, which shall not be unreasonably withheld.

23.4. Seller shall not be liable for any claim based upon Seller's compliance with any Specification provided by Buyer, unless: (i) Seller could have complied with the Specification using a design that was non-infringing; (ii) the Specification was derived from information provided by Seller; or (iii) Seller knew of a potential claim and did not promptly notify Buyer in writing.

## **24. PROPRIETARY INFORMATION**

24.1. Seller agrees that, with respect to all Proprietary Information regarding Buyer or its affiliates or customers, however received, it shall (i) use such Proprietary Information solely for the purpose of the Purchase Order and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing products for entities other than Buyer); (ii) maintain such Proprietary Information in confidence and secrecy, and not disclose to any third party or use, directly or indirectly, except as set forth below; and (iii) not reverse engineer, disassemble, or decompile such Proprietary Information. Seller shall protect the Proprietary Information from unauthorized disclosure and use with at least the same degree of care it normally exercises to protect its own proprietary information to prevent undesired dissemination and use thereof, and in no case shall the degree of care be less than reasonable care.

24.2. Seller may: (i) copy the Proprietary Information on an as required basis in order to fulfill its obligations under the Purchase Order, provided that all such copies or portions thereof bear copies of the original legends regarding confidentiality (if any); and (ii) disclose the Proprietary Information to those of its officers, employees, agents, and others under Seller's control (collectively, "Representatives"), who have a need-to-know for purposes of its performance under the Purchase Order. Seller shall cause all of its Representatives to observe the terms of this Proprietary Information clause and

shall be responsible for any breach of the terms of this Proprietary Information clause by it or its Representatives.

24.3. It shall not be a breach of confidentiality obligations hereof for Seller to disclose Proprietary Information where, but only to the extent that, such disclosure is required by law or applicable legal process, provided in such case Seller shall to the extent not prohibited by law and or regulatory process; (i) give the earliest notice practicable to Buyer that such disclosure is or may be required and (ii) cooperate in protecting the confidential or proprietary nature of the Proprietary Information which must so be disclosed.

24.4. Except as expressly provided in this Proprietary Information clause or in the Intellectual Property clause, it is understood that no right in, or license under, any present or future idea, invention, patent, trade secret, proprietary information, copyright, mask work, trade name or trademark is either offered or granted under this Proprietary Information clause, nor may any such right or license be implied by the disclosure or receipt of any information or data hereunder.

24.5. If the Parties have previously entered, or subsequently enter, into a separate nondisclosure agreement or other agreement regarding protection of Proprietary Information (an "NDA"), the Parties agree that in case of any conflicts or differences between this Article 24 and the NDA, the terms of the NDA shall take precedence over this Article 24, until such time as the NDA should expire or be terminated, in which case this Article 24 shall control.

## **25. EXPORT CONTROL**

25.1. Seller shall comply with the most current laws and regulations of the United States and any other applicable jurisdiction relating to sanctions, exports, imports, and foreign transactions, including, but not limited to: (i) the International Traffic in Arms Regulations (ITAR) administered by the Directorate of Defense Trade Controls, U.S. Dept. of State, 22 C.F.R. parts 120-130; (ii) the Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Dept. of Commerce, 15 C.F.R. parts 730-740; (iii) the Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Dept. of Treasury 31 C.F.R. parts 500-598; and (iv) Title 19 (Customs and Duties) of the Code of Federal Regulations; as well as the applicable laws and regulations of other countries.

25.2. Seller shall not disclose any technical data, nor deliver or export any Product manufactured by use of technical data, (i) out of the United States; (ii) to a national of a third country; or (iii) to foreign persons within the United States, without advance written authorization from Buyer.

25.3. If the Purchase Order supports commercial aircraft end use, Seller represents and warrants that (i) the Products, parts and components thereof, provided under the

Purchase Order are not “defense articles” (as defined in the ITAR) and (ii) the Service provided under the Purchase Order are not “defense services” (as defined in the ITAR). Seller affirms that an official capable of binding Seller knows or has otherwise determined that the Products, parts and components thereof, are not on the United States Munitions List (as set forth in the ITAR). Upon Buyer’s request, Seller shall provide documentation or other information that supports or confirms these representations.

## **26. TOXIC OR HAZARDOUS SUBSTANCES**

- 26.1. Seller warrants that, if the Purchase Order involves delivery of any hazardous material, the packaging and shipment of such material will be made in accordance with all applicable laws and regulations, and Seller shall submit a copy of a current Materials Safety Data Sheet (MSDS) to Buyer’s Authorized Purchasing Manager prior to delivery of any hazardous material.
- 26.2. Seller further represents and warrants that the Products and any substances contained therein or utilized in the production thereof are not prohibited or restricted by, and will be supplied and utilized in compliance with, all applicable environmental Laws, including but not limited to European Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (hereinafter, “REACH”), and that nothing prevents the import, sale, or transport of the Products or substances in Products, in any country or jurisdiction in the world and that all such Products and substances are appropriately labeled, if labeling is required, and have been pre-registered or registered or notified or authorized under REACH, if pre-registration, registration, notification or authorization is required. Seller shall bear all costs, charges and expenses related to pre-registration, registration, evaluation and authorization under REACH of the Products and substances in Products that are the subject of the Purchase Order.
- 26.3. In addition to the foregoing obligations, Seller shall, at Seller’s expense, timely provide Buyer with all relevant information, on the Products or Services, and any substances contained therein or utilized in the production thereof, as Buyer determines to be necessary for Buyer or Buyer’s customers to timely and accurately fulfill their obligations under REACH and other applicable Laws.

## **27. COMPLIANCE WITH LAWS**

- 27.1. Seller warrants that it shall comply with all applicable national, state, provincial and local laws, ordinances, rules and regulations applicable to the performance of the Purchase Order, except to the extent inconsistent with U.S. anti-boycott laws.
- 27.2. Seller shall, at the earliest practical time, notify Buyer if Seller is (i) charged, indicted, or convicted of any crime; (ii) suspended, debarred, or proposed for

suspension or debarment from doing business with the U.S. Government; or (iii) listed or is proposed to be listed by the U.S. Government in any “denial orders,” as a “blocked person” or “specifically designated national” or as a “specially designated terrorist.” Any such suspension, debarment, listing or proposal shall constitute cause for Buyer to terminate the Purchase Order for default.

## **28. QUALITY CONTROL**

- 28.1. Seller shall provide and maintain a quality control system to an industry-recognized quality control standard and in compliance with any other specific quality requirements applicable to the Purchase Order or as otherwise prescribed by Buyer.
- 28.2. Records of all quality control inspection work performed by Seller shall be maintained complete and available for inspection by Buyer and its customers.
- 28.3. If applicable, Seller shall maintain a counterfeit avoidance program that meets the requirements of SAE Standard AS6174 -- Counterfeit Material; Assuring Acquisition of Authentic and Conforming Material. Sellers who provide Products that are assemblies shall flow down these requirements to their sub-tier suppliers to prevent the inadvertent use of counterfeit parts and materials. Distributors or brokers that supply non-electrical standard parts, like fasteners, nuts, washers, springs, O-rings, inserts, and pins shall have a counterfeit detection process that is similar to and must meet the intent of, SAE standard AS 6081 and also must have a certification from the Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM), and that certification shall be delivered with each lot/shipment. Parts shall not be used or reclaimed and misrepresented as new.

## **29. GRATUITIES**

Seller (or any employee, agent, or representative of Seller) shall not offer or provide any gifts, gratuities, or other unauthorized benefits to any employee or representative of Buyer. In the event of any violation of this provision, Buyer may terminate the Purchase Order pursuant to the Termination for Default clause herein. The rights and remedies of Buyer in this gratuity clause are in addition to any other rights and remedies provided by law or equity or under the Purchase Order.

## **30. SUBCONTRACTING**

- 30.1. Seller shall not subcontract and shall not permit its first-tier suppliers or subcontractors to subcontract, work with respect to any Products or Service ordered hereunder, without the prior written approval of Buyer (which approval shall not be unreasonably withheld). Any such approval shall not relieve Seller of responsibility for the performance of its suppliers or subcontractors or for compliance with these Terms and Conditions.

30.2. Any subcontract awarded to a “foreign person” (as defined in the International Traffic in Arms Regulations) or to a “non-U.S. person” (as defined in the Export Administration Regulations) must comply with the Export and Import Compliance clause of the Purchase Order.

### **31. DISPUTES**

31.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under a Purchase Order, that Party must provide the other with a written request for dispute resolution (“Notice of Dispute”). Each Party shall, within five (5) calendar days of receipt of a Notice of Dispute, designate a representative for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within thirty (30) calendar days of receipt of the Notice of Dispute, executives of each Party shall attempt to resolve the issue within sixty (60) days of receipt of the Notice of Dispute.

31.2. For any dispute that cannot be resolved to both Parties’ mutual satisfaction within sixty (60) calendar days after the receipt of the Notice of Dispute, or such additional time as the Parties agree upon in writing, either party may bring suit in Federal or State court within the State of Connecticut.

31.3. Pending final resolution of any dispute, Seller shall proceed diligently with performance of the Purchase Order. These dispute resolution procedures do not supersede, delay, or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

31.4. Both Parties agree that, irrespective of the place of performance of the Purchase Order, the Purchase Order will be construed and interpreted according to the law of the State of New York, excepting that state’s laws on conflict of law.

31.5. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER SELLER AGAINST BUYER OR BUYER AGAINST SELLER ON ANY MATTER WHATSOEVER ARISING UNDER, RELATING TO, OR IN ANY WAY CONNECTION WITH PURCHASE ORDERS, THE RELATIONSHIP OF SELLER AND BUYER OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE OR REGULATION NOW OR HEREAFTER IN EFFECT.

### **32. PAYMENT BY SELLER; SETOFF**

With respect to the payment or performance of any obligation, sum or amount owing at any time to Buyer, Buyer shall, at its option, have the right either to (i) invoice Seller directly for such amounts, which invoice shall be paid within thirty (30) days of receipt by Seller or (ii) set

such amounts off against, or appropriate and apply them to (a) all deposits, amounts, or balances held by Buyer for the account of Seller; and (b) any amounts owed by Buyer to Seller.

### **33. SPECIFIC PERFORMANCE**

Seller agrees that damages in the event of breach of this Agreement by Seller may be difficult, if not impossible, to ascertain, and it is therefore agreed that Buyer, in addition to and without limiting any other remedy or right it may have, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and Seller hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude Buyer from pursuing any other rights and remedies at law or in equity which Buyer may have.

### **34. ASSIGNMENT**

Seller shall not assign including (by operation of law, merger or otherwise) the Purchase Order or any of its rights or obligations under the Purchase Order without Buyer's written consent and any assignment by Seller without Buyer's prior written consent will be null and void and shall constitute a material breach of the Purchase Order.

### **35. CERTAIN CHANGES**

In the event that there is a change in control with respect to Seller, Buyer shall have the right to terminate a Purchase Order in whole or part upon thirty (30) days' written notice. Buyer's obligation upon such termination shall be limited to payment for such goods and services actually received during that 30-day period. A change in control shall be deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of fifty (50%) percent or more of the ownership interest in, or voting power over, Seller. Furthermore, any change in manufacturing or location, including but not limited to any significant process, product, or inspection technique change, shall require notice to and written approval of Buyer before any such activities commence.

### **36. COMPLETE AGREEMENT**

Except as provided in the Proprietary Information clause, the Purchase Order is intended by the Parties as a final expression of their agreement, is the complete and exclusive statement of all terms and conditions of agreement with respect to the subject matter hereof, and supersedes and cancels all prior understandings, proposals, communications, and agreements between the Parties, whether written or oral, concerning the matters addressed in the Purchase Order.

### **37. SURVIVAL**

The terms and conditions of the Purchase Order regarding payment, intellectual property, proprietary information, property and tooling, warranties, and indemnification, and all others that by their sense and context are intended to survive the performance, termination or expiration of the Purchase Order shall survive and continue in effect. If any provision in the Purchase Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

### **38. NON-WAIVER**

A Party's failure at any time to enforce any provision of any Purchase Order shall not constitute a waiver of such provision or prejudice a Party's right to enforce such provision at any subsequent time.

### **39. RELEASE OR INFORMATION AND ADVERTISING**

Seller shall not, without Buyer's prior written consent, make any disclosure, news release or public announcement, denial or confirmation, regarding any part of the subject matter of the Purchase Order, or in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the Products and Services mentioned herein, except as may be required to perform the Purchase Order. Seller shall not use Buyer's or Buyer's customers' marks, logos or names, or release photographs of any of Buyer's or Buyer's customers' facilities, products, or personnel without Buyer's prior written consent.

### **40. INDEPENDENT CONTRACTOR STATUS**

The relationship of Seller to Buyer shall be that of independent contractors, and nothing herein contained shall be construed as creating any employer/employee, agency, partnership or other relationship of any kind. Seller's employees, subcontractors, agents or representatives involved in the performance of the Purchase Order shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries and other amounts due such persons in connection with the Purchase Order and shall be responsible for all withholdings, reports, and other obligations with respect to such persons, including, but not limited to, Social Security and income tax withholdings, unemployment compensation, worker's compensation premiums, and equal employment opportunity reporting.

### **41. HEADINGS**

The descriptive headings contained in a Purchase Order are for convenience of reference only and in no way define, limit or describe the scope or intent of the Purchase Order.

#### **42. RETENTION OF RECORDS**

Seller shall maintain complete and accurate records and documents supporting all Products and Services provided and costs and expenses incurred by Seller in the performance of a Purchase Order. Such records and documents shall be made available to Buyer at Seller's office for examination, reproduction, and audit by Buyer at all reasonable times from the date of the Purchase Order until the date that is (i) forty (40) years after final payment under the Purchase Order and (ii) the end of the retention period specified in the applicable Purchase Order (which may reflect the requirement of Buyer's customer), whichever is later. Seller shall provide assistance to interpret such records and information, if requested by Buyer.

#### **43. FAR/DFAR FLOWDOWN CLAUSES/PROVISIONS**

- 43.1. The FAR/DFAR clauses referenced in Exhibit A, to these Terms and Conditions, are incorporated herein by reference, with the same force and effect as if they were given in full text, and are, applicable, in instances where work is being performed under Purchase Orders for all U.S. Government contracts, prime contractors contracting with the U.S. Government and all subcontracts thereto.
- 43.2. The FAR/DFAR clauses referenced in Exhibit A may require the submission of certifications and representations. When requested by Buyer, Supplier shall furnish any certification or representation that Buyer determines is necessary for compliance with such requirements.

[Exhibit A Follows]