

# PROPULSION TECHNOLOGIES INTERNATIONAL

## TERMS AND CONDITIONS OF PURCHASE

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### ARTICLE 1 - DEFINITIONS. As used throughout this Agreement:

- (a) "Affiliate" means any entity controlling, controlled by, or under common control of a party to this Agreement.
- (b) "Agreement" means these terms and conditions ("Supply Agreement"), purchase orders or purchase agreements issued to Seller referencing this Supply Agreement ("Order(s)"), and any pricing agreements, specifications, statements of work, or other papers referenced in such Orders.
- (c) "Direct Procurement" means the purchase of any Good or Service that is incorporated into or performed on an aircraft or part thereof, or is otherwise provided to Purchaser's customer.
- (d) "Goods" means all products contracted for and supplied by Seller under this Agreement, including all components, raw materials, chemicals, finished goods, intermediate assemblies and associated packaging thereof.
- (e) "Indirect Procurement" means the purchase of any Good or Service that is *not* incorporated into or performed on an aircraft or part thereof, and is not otherwise provided to Purchaser's customer.
- (f) "Intellectual Property" means data, notes, reports, specifications, designs, drawings, computer software including source code and object code, methods, processes, techniques, know-how, ideas, inventions, and discoveries.

(g) "Intellectual Property Rights" means patents, patent applications, trade secrets, copyrights, trademarks, maskworks, database rights, industrial property rights, and other similar rights.

(h) "Prime Contract" means a contract defined by a government contract number printed on Orders issued pursuant to this Agreement.

(i) "Proprietary Information" means with respect to either party, all information and data, identified either orally or in writing as "Proprietary", "Confidential", or a similar designation, whether technical or non-technical, in any medium, furnished or made available directly or indirectly by one party to the other party.

(j) "Purchaser" means the party contracting with Seller for Goods and/or Services and identified as the purchasing entity on the Order.

(k) "Seller" means the party contracting with Purchaser to perform the work hereunder.

(l) "Services" means those services contracted for and supplied by Seller under this Agreement and as may further be described in Orders, statements of work, specifications, or other papers included in this Agreement.

**ARTICLE 2 - TERMS AND CONDITIONS.** Either Seller's written acknowledgement or Seller's full or partial performance, whichever occurs first, will constitute acceptance of the Orders. Any acceptance of this Supply Agreement by Seller is limited to acceptance of the express terms of the offer set forth in this Supply Agreement. Any proposal for additional or different terms and conditions (whether included in Seller's quote, acknowledgement, or any other document) is rejected unless accepted in writing by the Purchaser.

### **ARTICLE 3 - PAYMENT TERMS.**

(a) Standard Terms. Unless otherwise stated on the face of the order the standard term and condition of payment is Net 30. The payment start date shall be the later of (a) the date performance is requested by purchaser, (b) the material received date as identified in purchaser's computer system, or (c) the invoice approval date (which shall not be earlier than the date of complete performance). If payment date falls in a weekend or a holiday, purchaser will initiate payment to seller on the next business day.

(b) Invoicing. Settlement and invoicing shall be paperless and in a format acceptable to purchaser. Seller must provide remit to address and account receivable contact information as requested in form QC00258 Rev01, and wire transfer information for no-U.S. suppliers.

Seller shall invoice purchaser not later than ninety (90) days after delivery if goods and/or completion of services (Due Date), unless otherwise specified in the applicable purchase order. Purchaser shall deem any invoice invalid that is received more than ninety (90) days after the Due Date, unless specific terms to the contrary are acknowledged by purchaser in writing.

(c) Taxes. All sums payable under this agreement shall be exclusive of VAT or other sales tax, which shall (if applicable) be payable by the purchaser otherwise specified on the face of the purchase order as Resale.

(d) Set-off. Purchaser shall be entitled to set off any amount owing from Seller to Purchaser or to any of Purchaser's affiliated companies against any amount payable under this Agreement.

### **ARTICLE 4 - TRANSPORTATION AND DELIVERY.**

(a) Unless otherwise stipulated on the face of the Order, the applicable shipping and delivery Incoterms will be DAP – Miramar (PTI) Incoterms 2010 for non-U.S. suppliers and free of charge (FOC) for U.S. suppliers. In any event, title to Goods shall pass to Purchaser upon delivery. The seller is responsible for arranging carriage and for delivering the goods at the named place. Seller shall arrange insurance for the journey for a minimum level of coverage not inferior to the total amount stated on the face of the order.

(b) Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. Purchaser will pay no charges for unauthorized transportation. Any unauthorized shipment, which results in excess transportation charges, must be fully prepaid by the Seller. If Seller does not comply with the stated delivery schedule, Purchaser may require delivery by the fastest way. The charges resulting from this mode of transportation must be fully prepaid and the Seller must absorb the full cost of the shipment.

- (c) Seller's non-U.S. locations involved with the manufacture, warehousing, shipment, or delivery to U.S. agree to (1) review and use commercial reasonable efforts to comply Customs-Trade Partnership Against Terrorism (C-TPAT) Supply Chain Security Guidelines for International Suppliers/Shippers", (2) develop and implement security procedures ("Security Plan") consistent with appropriate C-TPAT, AEO, or similar program criteria, and (3) provide, upon Purchaser's request, (i) a copy of the Security Plan; (ii) the current contact information of a supply chain security company point of contact; (iii) the certification number if Seller is certified by a supply chain security program (e.g., CTPAT Status Verification Interface or SVI); (iv) any changes to its certification status; and (v) the completion of a supply chain security questionnaire (if not certified by a supply chain security program).
- (d) Seller agrees to contact Purchaser upon knowledge of any known or suspected security breach affecting the Goods (contraband, smuggling, threatening or suspicious activities detected, tampered container, trailer, lock or seal including a seal broken during a customs inspection).

#### **ARTICLE 5 - TERMINATION.**

- (a) Delay and Default. In the event Seller for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this Agreement, Seller shall promptly notify Purchaser in writing, and upon request, provide Purchaser adequate assurance of performance. In the event of a delivery delay, non-delivery or any other default by Seller in meeting its obligations under this Agreement, Purchaser may terminate all or any part of this Agreement without further compensation to Seller, and Purchaser's rights will be (i) for Goods, as specified in the Delaware Uniform Commercial Code (or if Seller is located outside the U.S., Article 45 of the United Nations Convention on Contracts for the International Sale of Goods); (ii) for Services, Purchaser may procure, upon such terms and from any source or service provider as it shall deem appropriate, supplies or services similar to those terminated, in which case Seller shall continue performance of such Agreement to the extent not terminated and shall be liable to Purchaser for any excess costs for Purchaser's procurement of such similar supplies or services. If Purchaser has made any progress payments under this Agreement, Seller shall refund to Purchaser any such payments immediately upon termination.
- (b) Termination for Convenience. Purchaser may terminate all or any part of this Agreement for convenience at any time after notice specifying the extent of termination and the effective date. After receipt of notice of termination, unless otherwise directed by Purchaser, Seller shall immediately: (1) stop work as directed in the notice; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement; and (3) terminate all subcontracts to the extent they relate to work terminated. Seller shall submit a final termination settlement to Purchaser in the form prescribed by Purchaser within ninety (90) days from the effective date of the termination. In no event shall Purchaser be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Agreement price. In the event that Purchaser wrongfully terminates this Agreement under paragraph (a), in whole or in part, such termination becomes a termination for convenience under this paragraph (b).

#### **ARTICLE 6 - DISPUTE RESOLUTION.**

- (a) Arbitration. If a dispute arises under or relating to this Agreement in any way, the parties will endeavor to resolve the dispute amicably, including by designating senior managers who will meet and use commercially reasonable efforts to resolve any such dispute. If the parties' senior managers do not resolve the dispute within sixty (60) days of first written request, either party may request that the dispute be settled and finally determined by binding arbitration. The arbitration will be conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with the applicable rules. The seat of the arbitration shall be Delaware, Delaware, and any hearings shall take place at a mutually agreed location or as the arbitrator(s) order. The arbitrator(s) will have no authority to award punitive damages, attorney's fees and related costs or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement and applicable law. The award of the arbitrator(s) will be final, binding and not appealable to the greatest extent the law permits, and judgment may be entered thereon in any court of competent jurisdiction. All statements made or materials produced in connection with this dispute resolution process and arbitration are confidential and will not be disclosed to any third party except as required by law or subpoena. Except as specified in paragraph (c) below, the parties intend that the dispute resolution process set forth in this Article will be their exclusive remedy for any dispute arising under or relating to this Agreement or its subject matter. Any claim against Purchaser shall be barred unless Seller has requested that it be resolved by arbitration in accordance

with this Article within one year of the dispute, which shall be the effective date of termination if the dispute is related to termination.

- (b) If Seller is located outside of the United States, the terms set forth in paragraph (a) above apply, and disputes shall be conducted in accordance with the rules of the International Chamber of Commerce.
- (c) Exception. Either party may at any time, without inconsistency with paragraph (a) above, seek from a court of competent jurisdiction any equitable, interim, or provisional relief to avoid irreparable harm or injury. Paragraph (a) above will not apply to and will not bar litigation regarding claims related to a party's Proprietary Information or Intellectual Property, nor will paragraph (a) above be construed to modify or displace the ability of the parties to effectuate any termination contemplated by this Agreement.

#### **ARTICLE 7 - PURCHASER'S PROPERTY.**

- (a) Property includes equipment, materials, bailed materials, samples, parts, tooling, tooling drawings, and software ("Property"). Purchaser's Property includes Property furnished to Seller by Purchaser or on behalf of Purchaser, or paid for by Purchaser ("Purchaser's Property"). Purchaser's Property is the property of Purchaser.
- (b) Seller may use Purchaser's Property for the sole purpose of performing its obligations under this Agreement. Nothing in this Article or elsewhere in this Agreement shall be interpreted as being an implied license or a license by estoppel to Intellectual Property Rights in Purchaser's Property.
- (c) Seller shall: plainly mark or otherwise adequately identify Purchaser's Property as being the property of Purchaser, where practical; safely store Purchaser's Property apart from other Property; hold Purchaser's Property at Seller's risk and insured for replacement cost with loss payable to Purchaser while in Seller's custody or control; maintain Purchaser's Property; and upon Purchaser's written request, remove and deliver Purchaser's Property to Purchaser in the same condition as originally received by Seller, except for reasonable wear and tear.
- (d) Seller shall not analyze, have analyzed, or cause to be analyzed Purchaser's Property to determine its chemical composition, physical properties, or for reverse engineering.
- (e) Seller may not use, disclose to others or reproduce Purchaser's Property for any other purpose, including, but not limited to, (1) the design, manufacture, or repair of parts, or to obtain FAA or any other governmental approval to do so; or (2) to provide any part by sale or otherwise, to any person or entity other than Purchaser.
- (f) If Seller, without Purchaser's prior written approval, designs or manufactures for sale to any person or entity other than Purchaser or Purchaser's Affiliate any hardware that is substantially similar to or can replace or repair any Purchaser designed product or system or any part for a Propulsion Technologies International (PTI), or other engine program in which Purchaser participates, or obtains FAA or other governmental approval for such hardware or repair, Seller shall be required to establish by clear and convincing evidence in any adjudication involving Purchaser's Property that neither Seller nor any of its employees, sub-contractors or agents used, directly or indirectly any of Purchaser's Property in such design or manufacture or in obtaining FAA or other governmental approval.
- (g) Government Contracts. If Property under this Agreement is furnished or paid for under a government subcontract that includes ownership of Property by the government, the government shall retain ownership of such Property. Seller hereby grants to Purchaser an irrevocable, fully paid up, perpetual license to use such Property.

#### **ARTICLE 8 - INTELLECTUAL PROPERTY.**

- (a) Background Intellectual Property
  - i) Intellectual Property developed or acquired by either party before or outside the scope of this Agreement is considered Background Intellectual Property ("Background Intellectual Property").
  - ii) Nothing in this Agreement shall entitle a party to ownership rights in any Background Intellectual Property of the other party.

- iii) Seller grants to Purchaser a non-exclusive, perpetual, irrevocable, fully paid-up, worldwide license to use, copy, and make derivative works of Seller's Background Intellectual Property and to disclose Seller's Background Intellectual Property to Purchaser's customers, partners, Affiliates, and contractors in connection with the sale, test, qualification, adaptation, modification, servicing, or repair of Goods and/or Services, including where such Goods and/or Services are incorporated into a higher tier assembly. The license granted herein shall supersede any restrictions stated in any Proprietary Information Agreement and shall take precedence over any restrictive or proprietary markings contained on the face of any Goods and/or Services documentation and/or data deliverables pursuant to an Order. To the extent Purchaser discloses Seller Proprietary Information under this paragraph, such disclosure will be subject to the confidentiality terms consistent with those set forth in Article 9(c).
- (b) Foreground Intellectual Property
- i) Intellectual Property developed by Seller when performing its obligations under this Agreement is considered Foreground Intellectual Property ("Foreground Intellectual Property").
  - ii) Purchaser shall own all Foreground Intellectual Property along with any Intellectual Property Rights thereto. As required under the terms of an Order or at Purchaser's request, Seller shall deliver all such Foreground Intellectual Property to Purchaser.
  - iii) Seller hereby assigns and agrees to assign all rights in Foreground Intellectual Property to Purchaser. In addition, Seller, will provide reasonable, timely assistance to Purchaser (at Purchaser's expense) to enable Purchaser to secure Intellectual Property Rights in Foreground Intellectual Property.
  - iv) When an Order includes line items for Goods and/or Services or an adaption or improvement to existing Goods and/or Services, Intellectual Property relating to such line items shall be considered Foreground Intellectual Property unless Seller establishes by documented evidence that such Intellectual Property was developed wholly outside of the scope of this Agreement, and without use of Purchaser's funds, Purchaser's Property, and Purchaser's Background Intellectual Property.
  - v) All Foreground Intellectual Property that is considered "Work Made for Hire" as defined in in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and used in 17 U.S.C. § 201 (or relevant EU legislation and the UK Copyright, Design and Patents Act 1988, c. 48, as amended), shall be deemed a "work made for hire" under this Agreement, with all right, title and interest in such Foreground Intellectual Property vesting with Purchaser.
  - vi) Seller will procure from its employees and subcontractors at Seller's sole expense (including any compensation due Seller's employees), all Intellectual Property Rights in Foreground Intellectual Property. Further, Seller will secure from Seller's employees and subcontractors the execution of all patent applications, assignments, and other instruments necessary for procuring Intellectual Property Rights and vesting title in Foreground Intellectual Property for Purchaser.
- (c) Government Contracts. If the Goods or Services under this Agreement are being delivered pursuant to a government subcontract that includes retention of ownership of Foreground Intellectual Property by the Seller, Seller shall retain ownership of such Foreground Intellectual Property. Seller hereby grants to Purchaser an irrevocable, fully paid up, perpetual license for all such Foreground Intellectual Property, with the right to sublicense.
- (d) Patent Markings. If Purchaser notifies Seller that Goods ordered under this Agreement are patented, Seller agrees to mark such Goods with any patent numbers or other markings designated by Purchaser, including updates to such numbers or markings.
- (e) Intellectual Property Representations and Warranties. Seller represents and warrants:
- i) It is not the proprietor of any Intellectual Property Rights that would impair or restrict the freedom of Purchaser, Purchaser's Affiliates, and their respective vendors and customers to make use of the Goods and/or Services;
  - ii) Goods and/or Services shall not infringe any Intellectual Property Rights of any third party;

- iii) Seller will not assert any Intellectual Property Rights against Purchaser, Purchaser's Affiliates, and their respective vendors and customers based on their use of the Goods and/or Services or their use, copying, and making derivative works of Seller's Background Intellectual Property; and
- iv) Seller will obtain the same warranties and commitment contained in this article running in favor of Purchaser, Purchaser's Affiliates, and their respective vendors and customers from each of Seller's subcontractors.

#### **ARTICLE 9 - CONFIDENTIALITY AND DATA PROTECTION.**

- (a) Each party's Proprietary Information shall remain the property of that party except as expressly provided otherwise by the other provisions of this Agreement.
- (b) All Purchaser's Property, Purchaser's Background Intellectual Property, Foreground Intellectual Property, and Orders shall be deemed Purchaser's Proprietary Information.
- (c) Seller shall not disclose Purchaser's Proprietary Information to any third party or use Purchaser's Proprietary Information for the benefit of any third party without Purchaser's consent. Seller shall protect Purchaser's Proprietary Information against unauthorized use or disclosure using at least those measures that it takes to protect its own Proprietary Information of a similar nature, but no less than reasonable care. Seller will permit access to Purchaser's Proprietary Information to only Seller's personnel who have a need to know for the purpose of performing Seller's obligations under this Agreement.
- (d) Notwithstanding the restrictions in this Article, Seller may disclose Purchaser's tooling and tooling drawings to Seller's sub-contractors for the sole purpose of assisting Seller in performing its obligations under this Agreement, provided that Seller's sub-contractors agree in writing to obligations of confidentiality at least as restrictive as those set forth in this Agreement for Purchaser's benefit.
- (e) Seller shall be liable to Purchaser for any unauthorized use or disclosure by Seller's personnel or any third party to which Seller discloses Purchaser's Proprietary Information.

#### **ARTICLE 10 - CHANGES.**

- (a) Purchaser reserves the right at any time to make changes within the general scope of this Agreement. Such changes may include: (1) drawings, designs or specifications; (2) technical clarifications; (3) artwork; (4) quantity; (5) method of shipment or packing; (6) quality; (7) place or time of delivery; or (8) amount of Purchaser's furnished property.
  - i) If any change causes a significant impact on the cost of, or the time required for, performance of any work under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both as applicable, in writing. Any Seller claim for adjustment under this article shall be deemed waived unless asserted in writing within twenty (20) days after receipt by Seller of the notice to make the change and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.
  - ii) Seller shall not proceed to implement any change for which Seller will seek an equitable adjustment until Purchaser provides for such change in writing.
  - iii) Nothing in this section, including any disagreement with Purchaser as to the equitable adjustment to be made, shall excuse Seller from proceeding with the change provided that Purchaser pays Seller all undisputed amounts pursuant to this Agreement.
- (b) Seller shall notify Purchaser in writing in advance of any and all: (1) changes to the Goods and/or Services, their specifications and/or composition; (2) process changes; (3) plant and/or equipment/tooling changes or moves; (4) transfer of any work hereunder to another site; and/or (5) sub-supplier changes, and no such change shall occur until Purchaser has had the opportunity to conduct such audits, surveys and/or testing necessary to determine the impact of such change on the Goods and/or Services and has approved such change in writing.
  - i) Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Purchaser.

- ii) For Goods that require Purchaser's source approval, Seller agrees to provide a minimum advance notice of 180-days to Purchaser of any changes to significant processes, including, but not limited to physical relocation of any manufacturing or quality operations. Within fourteen (14) days of such notice, Seller will generate a Critical Process Control plan, which is subject to Purchaser's review and approval.

**ARTICLE 11 - ANTICIPATION OF DELIVERY SCHEDULE.** It is Seller's responsibility to comply with its scheduled lead times, but not to anticipate Purchaser's requirements. Any material commitments or production arrangements made by Seller in excess of the amount or in advance of the time necessary to meet schedules that are within lead time shall be at Seller's sole risk and expense. Goods shipped to Purchaser in advance of Purchaser's requirements may be returned to Seller at Seller's expense.

**ARTICLE 12 - ASSIGNMENT AND CHANGE IN OWNERSHIP.**

- (a) Assignment. Any assignment or attempt to assign or subcontract Seller's obligations under this Agreement without the advance written consent of Purchaser shall be null and void and shall give Purchaser the right to terminate this Agreement for default.
- (b) Change in Ownership. If a third party submits a solicited or unsolicited offer to Seller that would result in a Change of Ownership or Control of Seller, as defined below, Seller shall give notice of such offer, including the identity of the offeror, to Purchaser as early as commercially practical following Seller's receipt of the offer. Before Seller accepts the offer, it shall give Purchaser an opportunity, within a reasonable time, to advise Seller of its impact on performance of this Agreement. If the Change in Ownership or Control occurs, Purchaser has the right at its discretion to terminate this Agreement. In the event of such termination, Seller agrees to render full cooperation to Purchaser in order to minimize disruption to the Purchaser's program. Pending termination or in lieu of termination, Purchaser may require Seller to provide adequate assurance of performance, including, but not limited to the institution of special controls regarding the protection of Purchaser's Property, Purchaser's Background and Foreground Intellectual Property, and Proprietary Information.
- (c) For purposes of this sub-paragraph (b), the terms "Change in Ownership or Control" shall mean any of the following: (1) the sale of equity shares controlling 20% or more of the voting rights in Seller or Seller's parent, (2) the sale, lease, transfer or other disposition of substantially all of the assets of Seller or Seller's parent, (3) a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction, (4) a tender offer or exchange offer for any of the outstanding shares of capital stock of Seller or Seller's parent, (5) a sale by Seller of the assets relating to the product Seller produces or will produce for Purchaser, or (6) any public disclosure of a proposal or plan or intention to do any of the foregoing.

**ARTICLE 13 - QUALITY ASSURANCE, INSPECTION AND TEST.**

- (a) Seller shall be responsible for the specific quality, performance, productivity provisions, and documentation requirements, if any, set forth in this Agreement. In addition, Seller shall be responsible for imposing the applicable quality assurance requirements on its subcontractors. Purchaser and Purchaser's customer, shall each have the right, at no charge to Purchaser or Purchaser's customer, to access the sites where the work under this Agreement is performed, in order to (1) conduct quality audits, (2) perform or witness inspections or tests of the Goods or Services furnished hereunder at Seller's facility (or elsewhere), (3) assess conformance with Purchaser's specifications, and (4) assess conformance with Seller's covenants under this Agreement. In accordance with 14 CFR 145.223 and 14 CFR 21.140, any Seller that accepts parts, which are regulated by the Federal Aviation Administration (FAA), or those regulated by EASA, DAOS or other regulator, must provide facility access to that regulator for surveillance of these parts.
- (b) The Seller agrees to use only experienced, trained and qualified employees in the performance of its obligations under this Agreement and all Services performed must be of first class quality and workmanship.
- (c) Notwithstanding Purchaser's right to audit in paragraph (a) above, all Goods and Services supplied under this Agreement shall be received subject to Purchaser's right of inspection, count, testing, acceptance and/or rejection per the technical specifications. Payment for Goods and/or Services delivered hereunder shall not constitute acceptance thereof, and all payments against documents shall be made with a reservation of rights by Purchaser for defects in Goods and/or Services, including, without limitation, defects apparent on the face thereof. The making of, or failure to make, any inspection or acceptance of the Goods or Services shall in no way impair Purchaser's right to reject nonconforming Goods or Services or to avail Purchaser of any other remedies to which it may be entitled.

- (d) Seller certifies that it shall provide and maintain quality control, inspection, and process control systems in accordance with Purchaser's then current specification for supplier quality product requirements. Seller will maintain Objective Evidence of its conformance with this paragraph. Objective Evidence means any statement of fact pertaining to the quality of a product or service based on observations, measurements or tests that can be fully verified. Evidence must be expressed in terms of specific quality requirements or characteristics. These characteristics are identified in drawings, specifications, and other documents that describe the item, process, or procedure.
- i) Requirements for direct procurement of Good or Services use in the repair process of aviation components or incorporated into or performed on an aircraft: (1) All Part(s)/Material must be traceable to an FAA Approved Inspection System. (2) Copies of records created by suppliers to demonstrate conformity of product to specified requirements shall be maintained in the customer's work order file for a minimum of ten (10) years. (3) Supplier's facility will be subject to FAA, PTI and PTI Customer Surveillance and investigation. (4) Continuing compliance with the Quality Management System approved by Propulsion Technologies Intl. (5) Each PTI supplier performing Tooling/Test Equipment repair or Calibration must provide the information indicated on the attached PTI Form #QC0094R, and provide the following statement: "Certification satisfies the requirements of ANSI/NCSL Z540-1-XXX" [Current Revision Year] (6) Supplier will maintain all technical data in current revision as it affects product or process conformity. (7) Supplier will ensure all data related to product or process design, test, inspection and verification is maintained for all critical items. (8) Supplier to provide test specimens when required in the Purchase Order. (9) Supplier will notify PTI of any non-conforming product to include product affected by changes to approved processes. (10) Supplier will notify PTI of any process sub-contracted to a sub-tier supplier prior to any work being performed and that such suppliers will be required to meet the requirements of the original purchase order. (11) Supplier shall ensure that personnel performing specialized operations or return to service meet specific industry and regulatory qualification requirements. (12) Suppliers providing hardware and weld wire material must comply with DFARS 252.225-7009 – Restriction on Acquisition of Certain Articles Containing specialty Metals. (13) PTI requires the supplier to (a) obtain organization approval of nonconforming product disposition; (b) notify PTI of changes in product and/or process, changes of suppliers, changes of manufacturing facility location and, where required, obtain organizational approval.
- (e) For Direct Procurements of Goods built to Purchaser's drawings, Seller shall have Adobe PDF reader version 11 or later with JavaScript enabled.
- (f) Counterfeit Goods. For purposes of this Article, Goods consist of those parts deliverable under this Agreement that are the lowest level of separately identifiable items (e.g., articles, components, goods and assemblies). "Counterfeit Goods" means Goods that have been misrepresented as having been designed and/or produced under an approved system or other acceptable method. Counterfeit Goods include, but are not limited to: (i) Goods that are an illegal or unauthorized copy or substitute of an Original Equipment Manufacturer (OEM) item; (ii) Goods that do not contain the proper internal or external materials or components or are not manufactured in accordance with the OEM design; (iii) Goods that are used, refurbished, or reclaimed but that Seller represents as being new; (iv) Goods that have not successfully passed all OEM required testing, verification, screening, and quality control but that Seller represents as having met those requirements; (v) Goods with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM Good is a genuine Good when it is not, and (vi) Goods that are an unauthorized copy or substitute that have been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source.
- i) Seller warrants and certifies that Goods delivered pursuant to this Agreement, unless otherwise specifically stated on the face of the Order, shall (i) be new, (ii) be and only contain materials obtained from the OEM or an authorized OEM reseller or distributor, (iii) not be or contain any Counterfeit Goods, and (iv) contain only authentic, unaltered OEM labels and other markings. Seller shall provide to Purchaser the OEM's certificate of conformance for any Goods acquired from an authorized OEM reseller or distributor. Goods shall not be acquired from independent distributors or brokers unless specifically authorized in writing by Purchaser.
- ii) Seller shall maintain a method of item traceability that ensures tracking of the supply chain back to the manufacturer of all Electrical, Electronic, and Electromechanical (EEE) parts included in assemblies and subassemblies being delivered per this Agreement. This traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer to the direct source of the product for Seller, and shall include the manufacturer's batch identification for the item(s) such as date codes, lot



codes, serializations, or other batch identifications. When requested by Purchaser, Seller shall provide OEM documentation that authenticates traceability of the affected items to the applicable OEM.

- iii) Seller shall immediately notify Purchaser if it knows or suspects that it has provided Counterfeit Goods.
- iv) In the event Goods delivered under this Agreement constitute Counterfeit Goods, Seller shall at its expense promptly replace such Goods with genuine Goods conforming to the requirements of this Agreement. Notwithstanding any other provision of this Agreement, Seller shall be liable for all costs relating to the removal or replacement of Counterfeit Goods, including without limitation Purchaser's or Purchaser's customer's costs of removing such Counterfeit Goods, reinserting genuine Goods, and any testing necessitated by the reinstallation of any Goods after Counterfeit Goods have been exchanged. Purchaser reserves the right to turn over suspected Counterfeit Goods to US Governmental authorities (Office of Inspector General, Defense Criminal Investigative Service, Federal Bureau of investigation, etc.) for investigation and reserves the right to withhold payment for the suspect items pending the results of the investigation. The remedies available under this Article are in addition to any other remedies Purchaser may have available to it in law or in equity, or in any other provisions in this Agreement.
- v) This paragraph (f) applies in addition to any other quality provision, specification, or statement of work included in this Agreement addressing the authenticity of Goods and Services. To the extent such provisions conflict with this paragraph (f), this paragraph prevails.
- vi) Seller shall flow the requirements of this paragraph 13(f) to its subcontractors and suppliers at any tier for the performance of this contract.

**ARTICLE 14 - NON-CONFORMING GOODS.**

- (a) Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise, negotiated with respect to Goods purchased from Seller by Purchaser or Purchaser's customer, Seller shall reimburse Purchaser for labor and material cost, including overhead and general and administrative expense reasonably incurred by Purchaser in connection with:
  - i) Failure of Goods or Services to conform to the requirements of this Agreement or defective material, workmanship or design; or
  - ii) Any removal of Goods at Seller's request; or
  - iii) Any removal of Goods required due to any previously required changes to said Goods that Seller has failed to incorporate.

- (b) For Direct Procurements, Purchaser may charge Seller a fixed amount for each Nonconforming Good as stated in the Reimbursement Schedule below. The Fixed Damages shall be charged to Seller automatically as a debit memo issued to Seller's account.

### REIMBURSEMENT SCHEDULE

**QEM:** Purchaser will charge Seller the following amounts for each Quality Event Management (QEM). In the event actual costs exceed \$100,000, Purchaser will charge Seller for such actual costs in lieu of the below amounts.

Event Description	Amount
Minor (Accept)	\$500 + QEM Add-ons
Major (no Field Action)	\$2,000 + QEM Add-ons
Major (w/Field Action)	\$3,000 + QEM Add-ons

QEM Add-ons (no Field Action)	Amount
Retest	\$7,500
Teardown	\$10,000

QEM Add-ons (w/Field Action)	Amount
IFSD, ATO	\$30,000
Teardown/UER	\$20,000
Field Retrofit/D&C's	\$15,000
Service Bulletin issuance	\$7,500

*\*The amounts set forth above are subject to revision on an annual basis at PTI's discretion.*

**MRB:** Purchaser will charge Seller 2% of part costs for each At Source MRB part. This amount is subject to revision on an annual basis at PTI's discretion.

**Definitions**

- "Aborted Take-off (ATO)" means a plane does not take off as a result of an engine error.
- "Actuals" means the actual labor and material cost, including overhead and general and administrative expense reasonably incurred by Purchaser in connection with the QEM.
- "At source MRB" means a non-conforming part which is subject to MRB (Material Review Board).
- "Delays and Cancellations (D's & C's)" means any schedule changes resulting from a quality event.
- "Field Action" means a Major QEM that requires additional action in the field (e.g. engine removal, additional inspection, etc)
- "Field Retrofit" means a Nonconforming Good must be replaced or changed in the field or at the air framer.
- "In Flight Shutdown (IFSD)" means an engine is powered down during flight.
- "Major" means an escape that cannot be processed as a minor non-conformance on MRB and needs to be processed as major non-conformance. Major events have a Product Quality Action Request (PQAR).
- "Minor" means an escape that is accepted as a minor non-conformance.
- "Retest" means an engine needs to be returned to a test cell to re-run the performance test.
- "Service Bulletin issuance" means an action that comes out of PCB and gets reported to the FAA.
- "Teardown" means an already assembled part of the engine needs to be torn down to a part level or any engine component needs to be disassembled from a completed or uncompleted engine. Work that has already been done has to be removed.

- (c) This remedy is not exclusive and shall not be in lieu of any other remedy available at law, in equity or under this Agreement.

**ARTICLE 15 - INDEMNITY AND INSURANCE.**

- (a) General Indemnification. Seller shall defend, indemnify, and hold harmless the Purchaser, its directors, officers, employees, agents representatives, successors and assigns (each an "Indemnified Party"), whether acting in the course of their employment or otherwise, from and against any and all loss, cost, expense, damage, claim, demand or liability (including reasonable attorney and professional fees and costs) arising from Seller's negligence, willful misconduct or breach of Agreement. An Indemnified Party shall have the right to participate in the selection of counsel and Seller shall not enter into any settlement agreement that contains any admission of liability on the part of Purchaser and/or any other Indemnified Party.
- (b) Intellectual Property Indemnification. Seller shall indemnify, defend, and hold harmless an Indemnified Party, from and against any and all loss, cost, expense, damage, claim, demand or liability (including reasonable attorney and professional fees and costs) arising out of any claim that the manufacture, use, sale, or furnishing of Goods and/or Services constitutes infringement of any Intellectual Property Rights, or for a breach of any of the representations and warranties contained in Article 8, above. If an injunction should issue, Seller shall
- i) Procure for Purchaser and Purchaser's subsidiaries and Affiliates, and their respective vendors and customers, the rights to continue using said Goods and/or Services; or
  - ii) At the election and with written approval of Purchaser, (x) modify the Goods and/or Services in a manner acceptable to Purchaser so they become non-infringing; (y) remove and replace the Goods with non-infringing Goods; or (z) remove the Goods and/or discontinue the Services, refund the purchase price and

reimburse Purchaser for all damages and costs associated with obtaining and installing a non-infringing alternative.

- (c) Insurance. Seller shall obtain and keep in force for the benefit of the Seller and Purchaser the following insurance to be issued by insurance carriers with a minimum A.M. Best's rating of A-: VII, or S&P A, or better and licensed to provide insurance in the jurisdiction in which work is to be performed, with minimum limits as set forth below:
- i) Comprehensive General Liability – \$1,000,000 combined single limit per occurrence;
  - ii) Aviation Products Liability - \$5,000,000 minimum per occurrence (Direct Procurements only);
  - iii) Comprehensive Automobile Liability – Bodily injury/property damage covering all vehicles used in connection with the Goods in the amount of \$1,000,000 combined single limit each occurrence;
  - iv) Statutory Workers' Compensation and or Employer's Liability as required by state or country law.
  - v) Product Cyber Security. Supplier shall obtain Technology Errors & Omissions Liability Insurance, with a minimum limit of USD \$1,000,000 per claim and in the aggregate, covering all Products including failure of information technology security, data privacy breach and software copyright infringement. If coverage is on a claims-made basis, the policy must contain a retro date which precedes the effective date of the Contract Document and continuity must be maintained for 1 (one) year following termination or expiration of the Contract Document.
- (d) Seller shall provide Purchaser with a certificate of insurance evidencing that the required minimum coverage is in effect and that Purchaser is named as an additional insured, provide a waiver of subrogation clause in favor of the Purchaser, and provide that all coverage provided by the Seller shall be primary. Such insurance shall not exclude the actions of any subcontractor that Seller may utilize under this Agreement. The insurance provided by Seller hereunder shall have no effect on any obligations imposed upon Seller under this Agreement.

#### **ARTICLE 16 - SELLER'S REPRESENTATIONS.**

- (a) Compliance with Laws. Seller represents and warrants that it shall perform all activities required under this Agreement in compliance with all applicable international, national, state and local laws.
- (b) Integrity. Propulsion technologies bases its Supplier relationships on lawful, efficient and fair practices, and suppliers must adhere to applicable legal and regulatory requirements in their business relationships as set out in this agreement. Suppliers are responsible to ensure that they and their employees, workers, representatives, suppliers and subcontractors comply with these standards of conduct and contractual obligations.
- (c) Release of Information. Seller shall not release any information concerning this Agreement or its business relationship with Purchaser, to any third party, except as required by applicable law, rule, injunction or administrative order, without Purchaser's prior written consent. Seller shall not use Purchaser's name, photographs, logo, trademark, or other identifying characteristics or that of any of its subsidiaries or Affiliates without Purchaser's prior written approval.
- (d) International Electro technical Commission ("IEC") Standards. If the Goods contain software, Seller represents and warrants that it will adopt policies and establish systems to comply with IEC 62443-4-1 on or before it is adopted as an international standard and will provide data regarding Seller's compliance to Purchaser upon request. If the Services involve Industrial Automation Control Systems (as defined by the IEC), Seller represents and warrants that it has adopted policies and systems to comply with IEC 62443-2-4 and will provide data regarding Seller's compliance to Purchaser upon request.

#### **ARTICLE 17 -SELLER'S EMPLOYEES**

- (a) Seller's personnel performing services under this Agreement shall remain employees of Seller subject to its right of direction, control and discipline and shall neither become employees of Purchaser nor be entitled to any rights, benefits or privileges of Purchaser employees. As appropriate, Purchaser shall give direction as to the ultimate objective of the project to the Seller. The Seller shall ensure that its personnel adhere to the terms and policies in this Agreement and that they have the requisite knowledge, training and ability to perform work under this Agreement competently and in accordance with applicable laws and regulations.

- (b) Seller's employees are not authorized to enter into any agreements or to make any commitments financial or otherwise on behalf of Purchaser. Specifically, no employee of Seller shall make contact with any government official regarding the continuation, renewal, amendment or modification of a Prime Contract.

#### **ARTICLE 18 - RECORD RETENTION REQUIREMENTS.**

- (a) Record Retention. Seller shall maintain complete and accurate records in connection with its performance under this Agreement for seven (7) years after completion of performance under this Agreement, including but not limited to, Orders, memoranda of negotiations showing the principal elements of price negotiations, and records substantiating charges for labor or services, including proper time clock cards, time vouchers, quality documents, or other similar records.
- (b) Classified Information. Upon completion of work by Seller under this Agreement, Seller shall return to Purchaser any classified information furnished by Purchaser, including all reproductions thereof, and Seller shall surrender classified information or materials developed by Seller in connection with this Agreement, unless the information has been destroyed, or the retention of the information is authorized in writing, by Purchaser or the government.

#### **ARTICLE 19 - EXPORT CONTROL REQUIREMENTS.**

For Non-U.S. Sellers or Sellers intending to Conduct Work Outside of the U.S., the following clauses apply:

- (a) Compliance with Export Laws. Seller agrees to comply with all applicable government export control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR," 22 CFR Part 120-130) and the Export Administration Regulations ("EAR," 15 CFR Parts 730-774).
- (b) Export Licenses. Seller agrees to obtain the required export licenses, unless otherwise agreed to by Purchaser.
- (c) For items subject to the ITAR ONLY: In the event the Goods or Services are subject to the U.S. Department of State (as defined in Sections 120.6 and 120.9 of the ITAR), Seller agrees to maintain a valid and current Directorate of Defense Trade Controls ("DDTC") registration and agrees to provide confirmation of such registration if requested by Purchaser.
  - i) With respect to such defense articles and/or defense services, Seller represents and warrants that it has not and will not pay or offer to pay for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of an international organization or non-U.S. Country any fees, commissions or political contributions as described under Part 130 of the ITAR without prior notice to Purchaser.
  - ii) In such event, Seller shall provide to the Purchaser, not later than 20 days after such an event, full disclosure of all information necessary for the Purchaser to comply fully with Sections 130.9 and 130.10 of the ITAR.).
- (d) Prohibited Goods and Services. The U.S. prohibits the importation of Goods or the purchase of Services from certain countries, entities, or individuals. Therefore, no Goods or Services from prohibited countries, entities, or individuals may be used directly or indirectly in the activities covered by this Agreement. The list of prohibited countries can change from time to time and it is Seller's responsibility to ensure compliance with such list at all times (<http://www.treas.gov/ofac>, <http://www.bis.doc.gov> and [http://pmdotc.state.gov/embargoed\\_countries/index.html](http://pmdotc.state.gov/embargoed_countries/index.html))

#### **ARTICLE 20 - CUSTOMS REQUIREMENTS.**

For Non-U.S. Sellers or Sellers intending to Conduct Work Outside of the U.S., the following clauses apply:

- (a) Importer of Record.
  - i) Seller must show proper notification on all shipping waybills. In addition, shipping cartons and documentation must meet all U.S. customs country of origin marking and invoicing requirements. Seller will be responsible for any fines or liabilities resulting from insufficient, improper or negligent invoicing or marking of shipments.
  - ii) For ocean shipments ONLY, Seller accepts and shall implement sufficient procedures to enable Purchaser to comply with U.S. Customs and Border Protection's (CBP) Importer Security Filing (ISF) requirements. Seller shall provide the following required data elements: (1) Seller or Seller's ultimate owner's registered name and address, (2) Manufacturer's name and address, (3) Purchaser's name and address, (4) Ship-to name and address of final destination, (5) Container stuffing location name and address, (6) Consolidator or stuffer name and address, (7) Importer of Record's name and U.S. Internal Revenue Service (IRS) or tax

identification number, (8) Consignee name(s) and U.S. IRS or tax identification number, (9) Country of origin – the country where goods are manufactured or produced, and (10) Six-digit harmonized tariff code; such information shall be provided to the designated Purchaser ISF agent within 72 hours prior to the shipping vessel sailing. Seller or its agents shall communicate ISF requirements, including the ISF pre-alert form (by electronic mail) to Purchaser's ISF agent at least 72 hours prior to the shipping vessel sailing. Seller or its agents shall not load container onto vessel prior to receipt of ISF acceptance from Purchaser's ISF agent.

- iii) In addition to any other rights and remedies Purchaser may have in law or in equity, Purchaser may deduct from the price of Goods any penalties, fines or assessments that U.S. Customs and Border Protection imposes on Purchaser for late or inaccurate or incomplete ISF filings caused by Seller noncompliance. Additional deductions may be taken for late deliveries, demurrage or expenses incurred due to Seller's failure to comply with ISF requirements
- (b) Anti-Dumping. Seller warrants that all sales made hereunder are or will be made at not less than fair value under the U.S. Anti-Dumping law (19 U.S.C. sec 1673 et. seq.), and Seller will indemnify, defend and hold Purchaser harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty.

**ARTICLE 21 - WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES.** If Seller's work under this Agreement involves operations by Seller on the premises of Purchaser or Purchaser's customer or access to Purchaser's systems or its computers, then:

- (a) Seller shall comply with all of Purchaser's safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work. Before assigning any person to enter PTI premises, the seller must conduct a Criminal Record/Background Check every 180 days, AN ACCEPTABLE BACKGROUND SCREEN SHALL CONSIST OF A WATCHLIST SCREEN, LAST 7 YEARS RESIDENCE AND EMPLOYMENT VERIFICATION AND CRIMINAL CONVICTION RECORDS INVESTIGATION CONDUCTED BY A 3RD PARTY AGENCY. THE FOLLOWING PERSONS SHALL NOT PERFORM WORK ON PTI PREMISES: A PERSON CONVICTED OF ANY FELONY, A PERSON CONVICTED OF A MISDEMEANOR INVOLVING VIOLENCE OR DISHONESTY IN THE PAST SEVEN YEARS. A PERSON CONVICTED OF MORE THAN TWO MISDEMEANORS IN THE PAST TWO YEARS SHALL NOT PERFORM WORK ON PTI PREMISES. PTI MAY REQUIRE PERSONS, BEFORE ENTERING THE PREMISES, TO COMPLETE A CRIMINAL CONVICTIONS QUESTIONNAIRE. IN THE EVENT THAT PTI HAS GROUNDS TO BELIEVE THAT AN INDIVIDUAL HAS FALSIFIED THE CRIMINAL CONVICTIONS QUESTIONNAIRE IN ANY WAY, SUCH PERSON SHALL NOT PERFORM WORK ON THE PREMISES. PTI RESERVES THE RIGHT, AT ITS DISCRETION, TO REQUEST FROM THE INDIVIDUAL'S EMPLOYER DOCUMENTATION OF THE COMPLETION OF A CRIMINAL CONVICTIONS RECORDS INVESTIGATION FOR ANY EMPLOYEE ASSIGNED TO WORK ON PTI'S PREMISES. THE EMPLOYERS FAILURE TO HAVE COMPLETED A CRIMINAL CONVICTIONS INVESTIGATION OF ANY OF ITS EMPLOYEES IN ACCORDANCE WITH THIS CLAUSE SHALL BE GROUNDS FOR IMMEDIATE EXPULSION OF THE INDIVIDUAL FROM PTI PREMISES AND PTI SHALL HAVE THE RIGHT TO TERMINATE FOR DEFAULT ALL ORDERS. THE EMPLOYER SHALL INCLUDE THIS CLAUSE "DRUG TESTING AND SECURITY CHECKS" IN ANY SUBCONTRACT PLACED PURSUANT TO A PTI ORDER WITH A SUBCONTRACTOR WHO WILL PERFORM WORK ON PTI PREMISES.
- (b) Employer shall validate the nationality of their employees in accordance with country specific criteria based upon access to export controlled technology. US Person Status Validation Documentation: The following documents are acceptable proof of US Person Status: Birth certificate, passport, certificate of citizenship (US INS form I-197, N-560, N-570), Certificate of Naturalization (US INS Form N-550 or N-570), or Permanent resident alien Identification Card (U.S. INS Form I-151 or I-551). Certification must be made by Company Official empowered and in a position to have access to employment records.
- (c) Seller represents and warrants that all of its employees who will perform work under this Agreement on Purchaser's or its customer's premises have been tested and are free from illegal drugs. The term "illegal drugs" does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.

OR to be used in circumstances where Seller does not have the right to conduct routine drug testing:

- (b) Seller represents and warrants that it will use reasonable endeavors to ensure that all of its employees who will perform work under this Agreement on Purchaser's or its customer's premises are free from illegal drugs. In the event that Seller has reason to suspect that any employee performing work under this Agreement on Purchaser's or its customer's premises is using illegal drugs, Seller agrees to take immediate steps to remove such employee from Purchaser's or its customer's premises and ensure that the employee does not continue to perform work under this Agreement. The term "illegal drugs" does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.
- (d) As permitted by applicable law, Seller represents and warrants that it will conduct a criminal convictions records investigation of its employees through the use of an approved third-party background check vendor before they are assigned to work on any Order that requires that employee to enter Purchaser's or its customer's premises. Seller shall include this provision in any subcontract placed pursuant to this Agreement where the subcontractor will perform work on Purchaser's or its customer's premises.
- (e) As permitted by applicable law, Purchaser reserves the right to deny any of Seller's employees, agents or subcontractors access to its or its customer's premises and/or systems for any reason in Purchaser's sole discretion, including but not limited to such individual being a former employee of Purchaser who received layoff benefits or Special Early Retirement Option (SERO) benefits from Purchaser within the prior three years or whose last performance rating as an employee of Purchaser was less than satisfactory.

#### **ARTICLE 22 - ENVIRONMENTAL MATTERS.**

- (a) Seller covenants that the Goods (1) comply with all laws governing the management, handling, shipping, import, export, notification, registration or authorization of chemical substances such as the Montreal Protocol, the Stockholm Convention on Persistent Organic Pollutants, the US the Toxic Substances Control Act, the European Union's Restrictions on Hazardous Substances and REACH legislation and other comparable chemical regulations (collectively "Chemicals Legislation"); and (2) can be used as contemplated by Purchaser in full compliance with the Chemicals Legislation.
- (b) Unless Purchaser has expressly agreed otherwise in writing, Seller covenants that the Goods do not contain (1) any chemicals that are restricted or otherwise banned under Chemicals Legislation and/or (2) contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE), arsenic, asbestos, benzene, polychlorinated biphenyls, carbon tetrachloride, beryllium or radioactive materials. Seller shall notify Purchaser in writing of the presence of any engineered nanoscale material contained in the Goods or used in Seller's operations. Upon request Seller shall provide, subject to reasonable protection of Seller's confidential business information, the chemical composition of the Goods and any other relevant information regarding the Goods, including without limitation, test data and safe use and hazard information.
- (c) Unless specifically defined as a requirement by Purchaser's engineering drawings or specifications, the use of cadmium plating or nickel cadmium plating is strictly prohibited in the manufacture of Goods. The use of cadmium plating or nickel cadmium plating is strictly prohibited on all tooling, fixtures, and test equipment that is used for manufacturing, assembly, test, or material handling of the Goods unless Seller has notified Purchaser in advance and has obtained its prior written consent to such use.
- (d) If Seller is located outside of the U.S. and is shipping Goods into the U.S., regardless of which party is the importer of record, Seller agrees to comply with the import restrictions contained in section 13 of the Toxic Substance Control Act (TSCA) 15 U.S.C. 2601 et seq., provide the appropriate TSCA Certification required under 19 CFR 12.121, and be responsible for any fines or liabilities resulting from breaches of this provision.
- (e) Seller covenants that it has included requirements substantially similar to the covenants in this Agreement in all sub-contracts it enters into related to the fulfillment of this Agreement.
- (f) When Seller ships Goods to Purchaser, Seller shall provide with the Goods, in the language(s) of the location(s) where the goods are delivered to Purchaser or Purchaser's designee, (1) safe use instructions; (2) hazard communication, safe transport and labelling information; (3) compliance and certification documentation; and (4) for chemical substance and mixtures, safety data sheets (MSDS/SDS). For each such material, identification shall reference the stock or part number of the delivered Goods.

**ARTICLE 23 – RETURNS AND WARRANTY.** The Seller is expected to deliver goods and services that are free of defects and fit for their predetermined purpose in accordance with the Terms and Conditions of this agreement and as

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stated on the purchase order. In the event of delivered product has defects; does not conform to contract specifications; or has been improperly ordered, received, or accepted, the Seller is required to the prompt correction or replacement of any defective or nonconforming supplies, workmanship or design at seller expense.

Seller is responsible for all transportation cost and for risk of loss in transit when goods and services are returned to the vendor for correction or replacement or covered by warranty. If Seller fails or refuses to correct or replace defective or nonconforming supplies or services, the Seller may also be financially responsible for the lost time if defective/nonconforming supplies adversely affected the project or caused delays. Seller shall provide a minimum warranty period after material acceptance or services completion as required in the below chart.

**MINIMUM WARRANTY PERIOD REQUIREMENT**

<b>Direct Procurement:</b>	<b>Warranty Period</b>
Goods and Services	12 Months
<b>Indirect Procurement:</b>	<b>Warranty Period</b>
Off-The-Shelf & Customized Goods	12 Months
General Services	6 Months

**ARTICLE 24 - MISCELLANEOUS.**

- (a) English Language. Except as the parties may otherwise agree, this Agreement, Orders, data, notices, shipping invoices, correspondence and all other writings shall be in the English language. In the event of any inconsistency between any terms of this Agreement and any translation thereof into another language, the English language meaning shall control.
- (b) Governing Law. All disputes between the Parties shall be governed by the laws of the state of New York, notwithstanding its conflict of laws rules. The application of the United Nations Convention on the International Sale of Goods is hereby excluded.
- (c) Waiver. Any failure or delay in the exercise of rights or remedies under this Agreement will not operate to waive or impair such rights or remedies. Any waiver given will not be construed to require future or further waivers.
- (d) Modifications. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding upon either party unless in a subsequent writing signed by the duly authorized representative of the party intended to be bound thereby.
- (e) Severability. If any portion of this Agreement is determined to be contrary to any controlling law, rule or regulation, such portion will be revised or deleted from this Agreement, but the balance of this Agreement will remain in full force and effect.
- (f) Reports. Upon request, Seller shall provide progress reports pertaining to the status of the work being performed under this Agreement. Such reports shall be in a form acceptable to Purchaser.
- (g) Business Continuity Plan. Upon request, Seller shall provide written business continuity plans and/or crisis management protocol, to Purchaser (or a third party identified by Purchaser).
- (h) Financial Records. Upon request, Seller will provide financial records, such as income statements, balance sheets, and cash flow statements, to Purchaser (or a third party identified by Purchaser) to enable Purchaser to evaluate the financial health of Seller.
- (i) Labor Disputes. The Seller shall notify Purchaser of all impending or existing labor complaints, troubles, disputes or controversies that may affect Seller's ability to perform its obligations under this Agreement. Purchaser shall have no liability or bargaining obligations under any collective bargaining agreement between Seller and its employees. Seller agrees to give Purchaser prompt notice of any union organization with respect to its employees.

- (j) Security Interest. If items are bailed to Seller or progress payments made, Seller grants Purchaser a security interest in equipment, machinery, contract rights, inventory, goods, merchandise and raw materials, whether now existing or hereafter arising, and any replacements, improvements, substitutions, attachments, accessories and accessions thereto or thereon provided by Purchaser or purchased by Seller with progress payments or advances made by Purchaser and to be used by Seller in manufacturing products ordered by Purchaser under this Agreement. Seller agrees to execute and deliver all documents requested by Purchaser to protect and maintain Purchaser's security interest.
- (k) Offset Requirements. All offset or countertrade credit value resulting from this Agreement shall accrue solely to the benefit of Purchaser. Seller agrees to cooperate with Purchaser in the fulfillment of any foreign offset/countertrade obligations. Purchaser considers its future and current offset/countertrade obligations as a factor in all Purchaser transactions.
- (l) Audit Rights. Purchaser shall have the right to audit all pertinent books and records of Seller, and to make reasonable inspections of Seller's facilities to verify compliance with this Agreement. In the event of noncompliance, Purchaser may take appropriate actions, up to and including termination pursuant to Article 5(a).
- (l) Survival. All rights, duties and obligations which by nature should apply beyond the term of the Agreement will remain in force after the complete performance of the Agreement.
- (m) Survival. All rights, duties and obligations which by nature should apply beyond the term of the Agreement will remain in force after the complete performance of the Agreement.

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APPENDIX I: THE FOLLOWING PROVISIONS ARE APPLICABLE TO ALL U.S. GOVERNMENT SUBCONTRACTS

- 01. If deliveries of Goods including data under this Agreement are to be made directly to the U.S. Government, Seller agrees to prepare and distribute the DOD form 250, "Material Inspection and Receiving Report", as set forth in part 53 of DFARS. Seller shall include a similar provision in any subcontract issued under this Agreement if the subcontractor will be making deliveries directly to the U.S. Government.
- 02. Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
- 03. The following clauses, and those clauses that are required by law or regulation to be flowed down to subcontractors that are contained in subsequent versions of Appendix I in effect on the date of any Orders, are hereby incorporated by reference, if and only to the extent they apply to the Goods or Services provided by Seller without exception or waiver based upon the type, nature, value and location for production of the Goods procured or Services performed under this Agreement. With regard to each clause, in the event this precondition does not exist, or a waiver or exception applies as set forth in the clause or its implementing regulation, such clause shall be self-deleting. In case of conflict between the body of the Agreement and this Appendix I, the Appendix will prevail.
- 04. Whenever necessary to make the context of the clauses applicable to this Order, the terms "Government", "Contracting Officer", and similar terms shall mean Purchaser, the term "Contractor" and similar terms shall mean Seller, and the term "Contract" shall mean this Order. However, the terms "Government" and "Contracting Officer" do not change (1) when modifying "Property" (e.g. "Government Property"), (2) in the patent clauses incorporated herein, (3) when a right, act, authorization or obligation can only be granted or performed by the Government or Contracting Officer, (4) when title to property is to be transferred directly to the Government, (5) when access to proprietary financial information or other proprietary data is required, except as otherwise provided herein, and (6) where specifically modified herein.



05. Suppliers are responsible to ensure that they and their employees, workers, representatives, suppliers and subcontractors comply with the standards of conduct set out in GE's Integrity Guide: [http://www.gesupplier.com/html/SuppliersIntegrityGuide/download/16-0146-GE\\_integrity\\_Guide\\_English.PDF](http://www.gesupplier.com/html/SuppliersIntegrityGuide/download/16-0146-GE_integrity_Guide_English.PDF).

06. The information in parentheses below is provided for informational purposes and to assist in determining applicability, and does not relieve any party from their contractual duties when the provision or clause applies pursuant to the requirements of each individual provision or clause.

**FEDERAL ACQUISITION REGULATION (FAR) CLAUSES**

- 52.202-1            DEFINITIONS
- 52.203-3            GRATUITIES (Applies when the Order exceeds the Simplified Acquisition Threshold ("SAT"))
- 52.203-7            ANTI-KICKBACK PROCEDURES (Applies when the Order exceeds the SAT; Note: Paragraph (c)(1) is excluded; In paragraph (c)(4) replace "The contracting officer may" with "To the extent the Contracting Officer has made an offset and directed Purchaser to withhold an amount, Purchaser may...")
- 52.203-10           PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (Applies when the Order exceeds the SAT)
- 52.209-6            PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (Applies when the Order exceeds \$30,000)
- 52.211-5            MATERIAL REQUIREMENTS
- 52.215-2            AUDIT AND RECORDS—NEGOTIATION (Applies when the Order exceeds the SAT)
- 52.215-10           PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (Applies when certified cost or pricing data is required)
- 52.215-14           INTEGRITY OF UNIT PRICES (Applies when the Order exceeds the SAT)
- 52.219-8            UTILIZATION OF SMALL BUSINESS CONCERNS (Applies when the Order exceeds the SAT)
- 52.219-9            SMALL BUSINESS CONTRACTING PLAN (Applies when the Order exceeds \$700,000)
- 52.225-13           RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
- 52.244-5            COMPETITION IN SUBCONTRACTING

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