# Standard Purchase Order Terms and Conditions (Revision Date: 5-15-15)

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1. DEFINITIONS
A. “Affiliate” means, with respect to any entity, any other entity that controls, is controlled by, or is under common control with such entity.
B. “Authorized Purchasing Representative” means the individual whose name appears on the face of the Order under “Buyer Name”, or who is otherwise designated in writing by Buyer as its authorized purchasing representative.
C. “Buyer” means Triumph Aerostructures, LLC dba Triumph Aerostructures – Vought Aircraft Division, including its Affiliates or divisions.
D. “Buyer’s Supplier Website” means Buyer’s non-secure, non-password protected website, https://www.tringhamsupplysource.com/suppliers/, that contains supplier non-specific information, located under Supplier Provisions, Terms and Conditions, Triumph Aerostructures – Vought Aircraft Division.
E. “Contract” means an agreement between the Parties under which the Buyer may purchase Products and/or Services from the Seller by releasing Purchase Orders against it.
F. “FAR/DFARS Flow-Down Addendum” means Buyer’s FAR/DFARS Flow-Down Addendum, as posted on Buyer’s Supplier Website.
G. “Intellectual Property” means patented and unpatented inventions and discoveries, pending patent applications, mask works, copyrighted works and copyrightable subject matter in published works and unpublished works, pending copyright registration applications, computer software, data, databases and documentation thereof, trade secrets and other confidential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.
H. “Master Agreement” means an agreement between the Parties under which the Buyer may purchase Products and/or Services from the Seller by (1) releasing Purchase Orders against it, or (2) issuing a Scheduling Agreement against it and releasing a Scheduling Agreement Release against such Scheduling Agreement.
I. “Order” means the instrument of contracting as modified by written changes issued by Buyer’s Authorized Purchasing Representative, and all referenced documents. The following are examples of an Order: (1) a Purchase Order, (2) a Purchase Order released under a Contract or Master Agreement, or (3) a Scheduling Agreement Release issued in conjunction with a Scheduling Agreement.
J. “Packaging and Packing Requirements Manual” means Buyer’s Packaging and Packing Requirements manual, as posted on Buyer’s Supplier Website.
K. “Parties” means Buyer and Seller collectively.
L. “Prime Contract” means a contracting instrument, if any, issued to Buyer or Buyer’s higher tier customer by the U.S. Government for the acquisition of Products or Services.
M. “Products” means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies described in the Order.
N. “Program Addendum” means certain terms and conditions applicable to the Order which are required by or in connection with a specific customer program designated in the Order. Each Program Addendum is posted on Buyer’s Supplier Website.
O. “Property and Tooling” means all property and tooling (including, but not limited to, all materials, dies, jigs, tools, patterns, molds, tapes, gauges, models, equipment, fixtures, software tools and other items) whether (1) furnished or made available by Buyer or Buyer’s customers or (2) fabricated, acquired, or otherwise provided by Seller or its suppliers or subcontractors and paid for by Buyer.
P. “Property and Tooling Requirements Manual” means Buyer’s Property and Tooling Requirements manual, as posted on Buyer’s Supplier Website.
Q. “Proprietary Information” means all information (including, but not limited to, oral, written, printed, and/or stored information used, prepared by, compiled by or in the possession of the disclosing party or its representatives) disclosed, provided, or made available by a party to the other party or otherwise received by the other party in contemplation of or in connection with the Order, and in whatever form or medium disclosed, provided, made available or received, that (1) is considered proprietary or confidential by the disclosing party; or (2) is information received from others that the disclosing party is obligated to treat as confidential. Proprietary Information includes any information about the Order, including the existence, terms, contents, or status thereof. Proprietary Information also includes memoranda, reports, analyses, extracts or notes the receiving party produces that are based on, reflect or contain any of the disclosing party’s Proprietary Information.
R. “Purchase Order” means a document that contains the required delivery schedules for specified quantities at the prices and under the terms and conditions set forth or referenced therein.
S. “Scheduling Agreement” means an agreement between the Parties under which the Buyer may purchase Products and/or Services from the Seller by releasing Scheduling Agreement Releases against it. When combined with a Scheduling Agreement Release to form an Order, the face of such Order will be deemed to be the face of the Scheduling Agreement.
T. “Scheduling Agreement Release” means a document released under a Scheduling Agreement that contains the required delivery schedules for specified quantities at the prices and under the terms and conditions set forth or referenced in the Scheduling Agreement, and which in combination with the Scheduling Agreement constitutes an Order.
U. “Seller” means the party to whom Buyer is issuing the Order.
V. “Services” means those services described in the Order, including any goods, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of such services.
W. “Shipping Requirements Manual” means Buyer’s Shipping Requirements manual, as posted on Buyer’s Supplier Website.
X. “SQAR Manual” means Buyer’s Supplier Quality Assurance Requirements manual, as posted on Buyer’s Supplier Website.
Y. “Statement of Work” means a description of Seller’s activities to be performed in support of Products or Services, and the definition and configuration of the Products, ordered by Buyer under the Order. In the case of Products, the
definition and configuration is contained in drawings, planning, and specifications, including but not limited to those listed in and transmitted by Buyer’s Purchase Order Engineering Transmittal(s) (“POETs”), Purchase Order Change Notice(s) (“POCNs”), Specification Release/Change Transmittal(s) (“SRCTs”), and Special Request(s) (“SREQs”).

Z. “Supplier Portal” means Buyer’s secure information platform that houses and provides a means of restricted access to information systems and computing systems, networks, files, data, or processes and a means of exchanging information. The Supplier Portal is located on Buyer’s Supplier Website under Site Log In, Triumph Aerostructures Suppliers.

AA. “Terms and Conditions” means these Standard Purchase Order Terms and Conditions, as posted on Buyer’s Supplier Website.

BB. “Traffic Routing Guide” means Buyer’s Traffic Routing Guide, as posted on Buyer’s Supplier Website.

2. SELLER’S OBLIGATIONS

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

(1) these Terms and Conditions, as follows:
   (a) if the Order is issued in support of a “Commercial” procurement (as designated on the face of the Order), then clauses 1 through 48 of these Terms and Conditions shall apply to the Order; or
   (b) if the Order is issued in support of a “Government” procurement (as designated on the face of the Order), then clauses 1 through 49 of these Terms and Conditions shall apply to the Order.

(2) requirements stated or expressly incorporated therein by reference on the face of the Order;

(3) the Program Addendum (if any) applicable to each customer program designated in the Order, as follows:

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(4) descriptions, drawings, planning, and specifications, including but not limited to those listed in and transmitted by Buyer’s POETs, POCNs, SRCTs, and SREQs;

(5) quality requirements, including but not limited to those set forth in Buyer’s SQAR Manual, as modified from time to time;

(6) property and tooling requirements set forth in Buyer’s Property and Tooling Requirements Manual, as modified from time to time; and

(7) instructions and requirements set forth in Buyer’s Packaging and Packing Requirements Manual, Buyer’s Shipping Requirements Manual, and Buyer’s Traffic Routing Guide, as modified from time to time.

The documents described in subparagraph (3) through (7) above are hereby incorporated by reference into these Terms and Conditions.

B. Seller shall also comply with any and all revisions to Buyer’s SQAR Manual, Buyer’s Property and Tooling Requirements Manual, Buyer’s Packaging and Packing Requirements Manual, Buyer’s Shipping Requirements Manual, and Buyer’s Traffic Routing Guide, as may be posted on Buyer’s Supplier Website from time to time. It is Seller’s obligation to monitor any such revisions.

C. The terms of the Order are limited to the terms identified above. No additional or different terms shall be binding on Buyer or Seller, and Buyer objects to any additional or different terms. If any of the terms are made inapplicable based on procurement type or subject, or other limitation set forth therein, such terms shall be self-deleting. Seller shall be deemed to have accepted the terms of the Order by furnishing Buyer written acknowledgment of Seller’s receipt of the Order or by commencing performance of the Order. Any
preparations made or work performed by Seller or its suppliers or subcontractors prior to issuance of the Order shall be at Seller’s expense.

3. BUYER AUTHORIZATION
A. 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 Order.
B. Buyer’s representatives other than Buyer’s Authorized Purchasing Representative may release to Seller information applicable to the Order. If Seller believes that information so provided to Seller changes the contractual requirements and/or performance of the 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.

4. CUSTOMER CONTACT
Seller shall not make any contact with or respond to any inquiry from actual or potential customers of Buyer or Buyer’s customers on the subject of the Order, without prior written consent of Buyer. Seller shall promptly notify Buyer of any such inquiry.

5. ORDER OF PRECEDENCE
In the event of any inconsistency between the terms of the Order or between the terms of the Order and the terms of any other document regarding the subject matter of the Order, the inconsistency shall be resolved by giving precedence in the following order:
(a) Vendor Managed Inventory Agreement (if any) between the Parties;
(b) Terms expressly stated on the face of the Order (excluding documents incorporated by reference);
(c) Terms expressly stated on the face of the Contract or Master Agreement (if applicable) (excluding documents incorporated by reference)
(d) Statement of Work (if applicable);
(e) A long-term agreement referenced in the Order (if applicable)
(f) Program Addenda incorporated by reference or referenced in these Terms and Conditions and the Order;
(g) These Terms and Conditions (excluding documents incorporated by reference or referenced herein);
(h) FAR/DFARS Flow-Down Addendum (if applicable)
(i) Electronic Commerce Agreement (if any) between the Parties;
(j) Any other documents incorporated by reference or referenced in these Terms and Conditions or the Order.

6. ADEQUATE ASSURANCE OF PERFORMANCE
A. If at any time Buyer has reasonable grounds for insecurity whether Seller’s performance will be full, timely, and continuing in accordance with the terms of the Order, Buyer may request, by written notice to Seller, adequate assurances in writing that Seller is able or willing to perform all of its respective obligations under the Order.
B. Seller shall provide with its assurances of performance any information, reports, or other materials prepared by Seller as Buyer may reasonably request. Upon Buyer’s request and as soon as practicable, Seller shall make available employees, including members of Seller’s senior management, to meet with Buyer to discuss those assurances of performance.
C. If Seller does not provide adequate written assurances within fifteen (15) calendar days after Buyer’s written notice and request, Buyer may, at its option, treat the Order as breached by Seller.

7. INSPECTION AND ACCEPTANCE
A. Representatives of Buyer and Buyer’s customers shall have the right to inspect all premises where the Order is being performed and the right to inspect and test all Products and Services, and all related supplies, components, material and workmanship, 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 and assistance for a safe and convenient inspection or test.
B. Unless otherwise specified in the Order, Buyer’s final inspection and acceptance shall be at destination. Notwithstanding any prior payment or inspection, Products and Services shall be the subject of final inspection and acceptance by Buyer and, subject to any contrary notice from Buyer, acceptance shall be deemed to have taken place ninety (90) calendar days after receipt by Buyer of such Products or Services.
C. 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 Order or the rights of Buyer and its customers under the Order or as may be provided by law or equity.
D. Seller shall make its records of all inspection work available to Buyer and Buyer’s customers during the performance of the Order and for such longer period as may be specified in the Order or required by law or equity.

8. CHANGES
A. Buyer's Authorized Purchasing Representative may at any time, by written notice to Seller, and without notice to sureties or assignees, if any, make changes within the general scope of the Order in (1) drawings, designs, specifications, planning, and/or other technical documents; (2) method of shipment, packaging, or packing; (3) place of delivery; (4) quantity of Product (increase or decrease); (5) delivery schedule(s); (6) place of inspection; and (7) place of acceptance. 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.
B. Buyer may submit such written notice by electronic mail to the Seller’s e-mail address to which the Order was delivered. Seller must immediately notify Buyer if Seller’s e-mail address changes. Seller’s failure to provide such notification shall not relieve Seller of its obligation to immediately comply with such change(s) as of the date the notice would have been received had Seller provided such notification.
C. Except as provided in the Delivery Schedules clause or
as otherwise expressly set forth in the Order, if the change causes an increase or decrease in the cost or time required to perform the Order, an equitable adjustment may be made in the price and/or delivery schedule and the Order modified in writing accordingly.

D. Any claim 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.

E. 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.

F. Seller shall provide Buyer with any supporting documentation necessary to verify Seller’s claim.

G. Failure to agree to any adjustment shall constitute a dispute within the meaning of the Disputes and Governing Law clause hereof. However, nothing in this Changes clause shall excuse Seller from proceeding with the Order as changed.

9.  INVOICING, PAYMENT, AND TAXES

A. The following subparagraphs shall apply to all orders:
   (1) The prices set forth in the Order are stated in U.S. Dollars and are not subject to exchange rate adjustments. Buyer’s payment to Seller shall be made by Buyer’s check in U.S. Dollars. Nothing in this Invoicing, Payment, and Taxes clause shall preclude Buyer and Seller from agreeing to have payment made by electronic funds transfer or other such means.
   (2) All invoices shall be sent to Buyer at the following address:
   Triumph Aerostructures – Vought Aircraft Division
   Attention:  Accounts Payable
   1401 Nolan Ryan Expressway
   Suite 300
   Arlington, TX 76011
   (3) In the event that the price and/or terms set forth in any invoice differ from or are inconsistent with the price and terms set forth in the Order, the price and terms set forth in the Order control and any different or inconsistent terms are deemed rejected and not part of the agreement between Buyer and Seller. For the avoidance of doubt, Buyer objects to any price or term set forth in any invoice which is not consistent with the Order.
   (4) Unless otherwise agreed by Buyer, Buyer shall have no obligation to pay any Seller invoice submitted more than six (6) months after the date of delivery of the invoiced Products or completion of the invoiced Services.
   (5) Payment shall not constitute acceptance of Products or Services. Buyer shall remit payment to Seller’s address indicated on the Order.

B. To the extent the Order is an order for Products, the following additional subparagraphs shall apply:
   (1) Buyer shall pay Seller the price set forth in the Order for the Products received, subject to paragraph D below. Payment due dates, including discount periods, will be calculated from the date of receipt of Products, the date of receipt of a correct invoice, or the date specified for delivery of Products, whichever is later, under the terms set forth in the Order.
   (2) Seller shall submit a separate invoice per shipment per Order and shall include the following information taken from the Order: 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 phone number and address; invoice number, invoice date, total amount due, ship date, and shipper number or packing slip number or Approval to Ship (ATS) number, if applicable. Seller will also include such additional information or supporting documentation as may be required by Buyer’s Traffic Routing Guide. No invoice shall be issued prior to shipment of Products.

C. To the extent the Order is an order for Services, the following additional subparagraphs shall apply:
   (1) Buyer shall pay Seller the price and/or rates set forth in the Order for the Services performed. Payment due dates, including discount periods, will be calculated from the date of completion of Services or receipt of correct invoice, whichever is later, under the terms set forth in the Order.
   (2) The price and/or rates set forth in the Order includes all profit, wages, salaries, overhead, taxes, and other costs and expenses (including travel, telephone, supplies, etc.) unless otherwise specifically addressed in the Order. No overtime, expedite charges, or other premium rates will be paid unless specifically authorized by Buyer in the Order. Buyer shall make no payment for work performed during holiday or other overtime periods, unless such work is expressly authorized by Buyer in the Order.
   (3) Unless otherwise specified in the Order, no invoice shall be issued prior to completion of the Services. Seller shall include in the invoice the following information taken from the Order: Order number, item number, a brief description of the Services, price and/or rates, and any discount payment terms. Seller’s invoice shall also include: Seller’s phone number and address; invoice number, invoice date, and total amount due. Seller shall also provide such evidence as Buyer may reasonably require in support of the invoice. At any time prior to final payment under the Order, Buyer may have invoices audited as to validity. Payment of Seller’s invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.

D. Taxes
The prices in the Order include all applicable federal, state, and local taxes.
(1) If the Order is for Products in support of a customer program designated in the Order, the Products are for resale or tax exempt use. Seller shall not bill state or local sales or use tax for delivery or performance in California, Florida, Georgia, Tennessee, or Texas because Buyer maintains a current registration number with these states. Buyer will provide the applicable exemption certificate to Seller.
(2) If the Order is for Products, no program is designated in the Order, and the ship-to address is in Texas, then Seller shall not bill Texas state or local sales or use tax. Buyer maintains...
a direct payment permit for deliveries to Texas and will remit taxes directly to the State of Texas. Buyer will provide its Texas Direct Payment Exemption Certificate to Seller.

(3) If subparagraphs (1) and (2) above do not apply, then Seller shall identify the applicable tax separately on each invoice. If Buyer determines that a tax exemption applies, then Buyer shall pay Seller the price set forth in the Order minus the tax; otherwise Buyer will pay Seller the price set forth in the Order.

10. DELIVERY SCHEDULES
A. The contractually required delivery dates are as set forth in the Order. Such delivery dates are the dates on which the Products and/or Services must be received at the location(s) designated by Buyer regardless of the agreed upon shipping terms.

B. Notwithstanding the Changes clause herein, Buyer may make changes to the delivery schedules of the Order without price adjustment or cost impact, provided that:
   (1) For any delivery schedule acceleration, Buyer provides notice to Seller at least four (4) weeks prior to the accelerated delivery date(s);
   (2) For any delivery schedule deceleration, Buyer provides notice to Seller at least four (4) weeks prior to the then current delivery date(s).

Prices for rescheduled Products will be those in effect at the time of the delivery.

C. 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: (1) procurement of materials in advance of standard industry lead times in effect at the time of such material procurement; and/or (2) commencement of production in advance of Seller’s standard lead time for the product.

11. PACKAGING AND PACKING
Seller shall, unless otherwise stated in the Order, prepare and package all Products in accordance with the requirements set forth in Buyer’s Packaging and Packing Requirements Manual. Damage resulting from failure to comply with such requirements will be charged to Seller.

12. SHIPPING, DELIVERY, TITLE, AND RISK OF LOSS
A. Shipping terms shall be as designated on the face of the Order. Seller must ship strictly in accordance with the instructions and requirements set forth in Buyer’s Shipping Requirements Manual and Buyer’s Traffic Routing Guide.

B. Unless otherwise directed by Buyer, if an Order is labeled for OTMS delivery, Seller shall process all deliveries through and comply with all instructions and requirements of Buyer’s Order/Transportation Management System (“OTMS”). OTMS can be accessed from Buyer’s Supplier Website under Shipping Information, Business Unit Shipping Information, Triumph Aerostructures – Vought Aircraft Division, Link to OTMS System. When using OTMS, Seller must include the OTMS generated Approval to Ship (ATS) number on its invoice in lieu of a shipper number or packing slip number.

C. Seller acknowledges that in the event that Seller processes a delivery outside of OTMS or fails to comply with all requirements of OTMS, when required, or fails to ship strictly in accordance with Buyer’s Traffic Routing Guide, Buyer will incur certain losses which are difficult to establish and verify. Accordingly, Seller agrees that Buyer shall be entitled to liquidated damages in the amount of one hundred dollars ($100) for each such delivery or failure. Such liquidated damages are intended as compensation for the losses incurred by Buyer as a result of Seller’s failure to use and/or comply with the requirements of OTMS and/or Buyer’s Traffic Routing Guide, are not intended as punishment, and are without prejudice to any other rights and remedies available to Buyer under the Order, or in law or equity.

D. Risk of any loss and/or damage to Products occurring before receipt at the relevant delivery point in accordance with the shipping terms of the Order shall be Seller’s responsibility. Except as otherwise specified within the Order, title and risk of loss shall pass to Buyer upon receipt at the relevant delivery point in accordance with the shipping terms of the Order (except for loss or damage resulting from Seller’s fault or negligence or failure to comply with the terms of the Order); however, passing of title shall not relieve Seller of any other obligations under the Order.

E. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in the Order. Unauthorized overshipments and early shipments may be returned at Seller’s expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.

F. All Parties expressly agree that time is of the essence in the performance of the Order.

G. Whenever it appears Seller will not meet the Order schedule, 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 to the maximum extent possible, including the expenditure of premium time and most expedient transportation. Seller shall be responsible for any additional costs associated with such efforts, reasonable delay and disruption costs incurred by Buyer, and other costs or damages which Buyer incurs or for which Buyer is responsible as a result of or in connection with late deliveries or performance.

H. If Seller is unable to meet the required schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (1) cancel the Order, in whole or in part, or (2) fill such Order, or any portion thereof, from sources other than Seller and to reduce Seller’s Order quantities accordingly at no increase in unit price, without any penalty to Buyer.

THIS SHIPPING, DELIVERY, 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.

13. 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 or services in like or smaller quantities/volumes under similar conditions during the period of the 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.

14. INTELLECTUAL PROPERTY

A. If the Order is issued in support of a “Commercial” procurement (as designated on the face of the Order), the following subparagraphs shall apply to the Order:

   (1) Seller shall own any Intellectual Property invented, authored, or developed by Seller prior to the date of the Order that relates to the Products delivered or Services performed by Seller under the Order, and Seller hereby grants Buyer a nonexclusive, royalty-free, non-terminable, irrevocable, worldwide right and license to practice and use and license others to practice and use such Intellectual Property, and to make, have made, sell, offer for sale, and import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, to the extent such Intellectual Property would otherwise interfere with use or enjoyment of the Products or Services by Buyer, its subcontractors or suppliers, or any customers of Buyer or Buyer’s customers.

   (2) Buyer shall own and Seller acknowledges that any Intellectual Property invented, authored, or developed by Seller in the performance of the Order shall be owned exclusively by Buyer, and Seller agrees to and hereby does presently assign such Intellectual Property to Buyer and further agrees to and shall (i) execute any and all documents necessary and requested by Buyer to perfect Buyer’s title in such Intellectual Property, including, but not limited to, assignments of all right, title, and interest Seller may have in such Intellectual Property; (ii) obligate Seller’s employees and/or contractors involved in the invention or development of such Intellectual Property to execute all documents necessary and requested by Buyer to perfect Buyer’s title in such Intellectual Property, including, but not limited to, inventor’s declarations and assignments of all right, title, and interest such employees may have in such Intellectual Property; and (iii) obtain for Buyer all such executed documents as set forth in section (ii) above.

   Buyer hereby grants Seller a limited, nonexclusive, royalty-free, irrevocable, worldwide right and license to use Intellectual Property invented, authored, or developed by Seller in the performance of the Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Buyer may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, but such license to Seller is specifically limited to and for the sole purpose of Seller’s fulfilling its requirements and responsibilities under the Order.

B. The following subparagraphs shall apply to all orders:

   (1) Seller represents and warrants that Seller owns, or has and will maintain a license to use, all intellectual property rights necessary for the performance of its obligations under the Order. In addition to and without in any way diminishing or restricting Seller’s obligations under this Intellectual Property clause, if any Product or Service, or any component, part or feature thereof, becomes the subject of any claim, suit or action related to the infringement of any intellectual property rights, or in the event of an adjudication that any Product or Service, or component, part or feature thereof, infringes any intellectual property rights, or, if the manufacture, sale, use or maintenance of any Product or Service, or part, component or feature thereof, is enjoined or restricted, Seller shall, in order for Buyer and customers of Buyer and Buyer’s customers to have uninterrupted use and enjoyment of such Product or Service, or part, component or feature thereof, at Seller’s option and expense: (i) procure for Buyer and customers of Buyer and Buyer’s customers the rights, under such intellectual property rights, to use such Product or Services, or part, component or feature thereof; (ii) replace such Product or Service, or part, component or feature thereof with one of a similar nature and quality that is non-infringing; or (iii) modify such Product or Service, or part, component or feature thereof to make same non-infringing.

   (2) Except to the extent such infringement arises from Seller’s compliance with formal specifications issued by Buyer and such infringement could not be avoided in complying with such specifications, Seller shall indemnify, defend, and hold harmless Buyer and any customers of Buyer or Buyer’s customers from any and all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known to Seller and exceeding actual damages and/or actual attorneys’ fees), liabilities, damages, costs and attorneys’ fees related to the 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 mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Products or Services by Buyer or any customers of Buyer or Buyer’s customers. Buyer and/or any customers of Buyer or Buyer’s customers shall duly notify Seller of any such claim, suit, or action, and Seller shall, at its own expense, fully defend such claim, suit, or action on behalf of Buyer or any customers of Buyer or Buyer’s customers.

15. PROPRIETARY INFORMATION

A. Each party agrees that it shall maintain in confidence and secrecy, and not disclose to any third party or use, directly or indirectly, except as set forth below, all Proprietary Information (including information of a competitive sensitive nature) received from or made available by the other party, or received orally or visually. Each party shall protect the other party’s 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.

B. Each party may: (1) copy the Proprietary Information received from the other party on an as required basis in order to fulfill its obligations under the Order, provided that all such
copies or portions thereof bear copies of the disclosing party’s original legends (if any); and (2) disclose the Proprietary Information to those of its officers and employees (including officers and employees of its Affiliates), and others under the receiving party’s control (collectively, “Representatives”), who have a need-to-know for purposes of its performance under the Order. Additionally, the receiving party may disclose the disclosing party’s Proprietary Information to any third party participating in Buyer’s customer’s program to the limited extent necessary to permit such third party to interface with products and/or Proprietary Information or to perform its obligations under such program, provided that (i) such third party has entered into a written agreement of confidentiality with Buyer or Seller and (ii) the agreement executed by them includes provisions for the protection of both Parties’ Proprietary Information substantially the same as provided for herein. The receiving party 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.

C. The obligations imposed by this Proprietary Information clause shall not apply, or shall cease to apply, to any Proprietary Information if or when, but only to the extent that, such Proprietary Information:

(1) was known to the receiving party prior to the receipt of the Proprietary Information hereunder;
(2) other than by act or omission attributable to the receiving party (passes into the public domain;
(3) becomes known to the receiving party from sources other than the disclosing party under circumstances not involving, to the knowledge of the receiving party, any breach of any confidentiality obligation; or
(4) is independently developed by the receiving party who had no substantive knowledge of the disclosing party’s information or data, as evidenced by the written records thereof.

The fact that individual elements of a party’s Proprietary Information may be in the public domain shall not relieve the receiving party of its obligations under the Order unless the specific combination or combinations of elements as disclosed in the Proprietary Information are available to the public.

D. It shall not be a breach of the confidentiality obligations hereof for a receiving party 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 the receiving party shall to the extent not prohibited by law and or regulatory process, (1) give the earliest notice practicable to the disclosing party that such disclosure is or may be required and (2) cooperate in protecting the confidential or proprietary nature of the Proprietary Information which must so be disclosed.

E. 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.

F. In the event that the Parties have previously entered into a nondisclosure agreement or proprietary information agreement, the Parties agree that their rights and obligations with respect to Proprietary Information shall be governed by the most favorable provisions as to the disclosing party’s rights and obligations and protection of the disclosing party’s information as are set forth in such nondisclosure agreement or proprietary information agreement or in this Proprietary Information clause.

16. PROPERTY AND TOOLING

Except as otherwise specified within the Order, Buyer or Buyer’s customers, as applicable, shall own and retain title to any and all Property and Tooling. Seller shall not use such Property and Tooling other than in the performance of the Order without Buyer’s prior written consent. Seller shall bear all risk of loss, damage, or destruction of such Property and Tooling while such Property and Tooling remains in Seller’s possession, custody or control, including any transfer to Seller’s suppliers or subcontractors. Seller shall maintain the Property and Tooling, and shall submit a current inventory of all Property and Tooling to Buyer no later than March 1st of each year and at any time upon Buyer’s request. Buyer reserves the right to inspect or otherwise audit the Property and Tooling inventory. Upon completion, expiration, or termination of the Order, Seller shall comply with Buyer’s directions regarding transfer, removal, delivery, retention and/or disposal of the Property and Tooling. Further detail regarding the Parties’ respective rights and obligations with respect to Property and Tooling is set forth in Buyer’s Property and Tooling Requirements Manual, and Seller shall comply with such manual, as modified from time to time.

17. SUBCONTRACTING

Seller shall not subcontract, and shall not permit its first-tier suppliers or subcontractors to subcontract, the whole or any aspect of any Products or Services 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.

18. TERMINATION FOR CONVENIENCE

A. Buyer may terminate performance of work under the Order in whole or, from time to time, in part if Buyer determines that a termination is in its interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and 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 or adjusting any amounts due under this Termination for Convenience clause.

(1) Stop work as specified in the notice.
(2) Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order.
(3) Terminate all subcontracts and purchase orders to the extent they relate to the work terminated.
(4) Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the subcontracts and
purchase orders terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts or purchase orders; the approval or ratification will be final for purposes of this Termination for Convenience clause.

(6) As directed by Buyer, transfer title and deliver to Buyer:

(a) The fabricated or unfabricated Products, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
(b) The completed or partially completed plans, drawings, information, tooling, equipment, and other property that, if the Order had been completed, would be required to be furnished to Buyer.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to the Order that is in the possession of Seller and in which Buyer has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that Seller:

(a) is not required to extend credit to any purchaser; and
(b) may acquire the property under the conditions prescribed by, and at price approved by Buyer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under the Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

C. Seller shall submit complete termination inventory schedules no later than sixty (60) calendar days after the effective date of termination, unless extended in writing by the Buyer.

D. In the event of a termination under this Termination for Convenience clause, Buyer shall be required to pay (to the extent not already paid) the Order price for Products and Services delivered and accepted, and Buyer and Seller shall agree on the amount of payment for any work in process and other long-lead material authorized by Buyer to be acquired or produced for the work terminated. Notwithstanding the foregoing, Buyer shall not in any event be required to pay any amounts in excess of the Order total price and no amount will be allowed for profit on the terminated portion of the Order. In the event of a partial termination, no adjustment will be made in the price of that portion of the Order which has not been terminated. To the extent that subcontracts or purchase orders are not assigned to Buyer, Seller shall indemnify, defend, and hold harmless Buyer from and against any and all claims, suits, and proceedings against Buyer by any subcontractor or supplier of Seller with respect to such termination, and any and all reasonable costs and expenses incurred by Buyer in connection with the defense or settlement of any such claims, suits, or proceedings.

E. After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal no later than three (3) months after the effective date of termination, unless extended in writing by Buyer. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.

F. Unless otherwise provided in the Order, Seller shall maintain all records and documents relating to the terminated portion of the Order for seven (7) years after final settlement. This includes all books and other evidence bearing on Seller’s costs and expenses under the Order. Seller shall make these records and documents available to Buyer, at Seller’s office, at all reasonable times, without any direct charge.

19. TERMINATION FOR DEFAULT
A. Buyer may, by written notice of default to Seller, terminate the Order in whole or in part, if Seller:

(1) Fails to deliver the Products or to perform the Services within the time specified in the Order or any extension granted in writing by Buyer;
(2) Fails to make progress so as to endanger performance of the Order or to perform any of the other provisions of the 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;
(3) Fails to provide adequate assurances of performance in accordance with the Adequate Assurance of Performance clause herein; or
(4) 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.

In addition, Buyer may, by written notice to Seller, terminate the Order in whole or in part, in the event one of the following occurs, is threatened, or is imminent with respect to Seller: suspension of business; liquidation proceedings; filing for dissolution; conveyance, transfer or lease of a substantial part of Seller’s assets; transfer of beneficial ownership of more than fifty percent (50%) of Seller’s outstanding equity interests entitled to vote for the election of Seller’s directors or managers; or consolidation with or merger into another entity.

B. If Buyer terminates the Order in whole or in part for default, Buyer may acquire, under the terms and in the manner Buyer considers appropriate, Products or Services similar to those terminated, and Seller will be liable to Buyer for reasonable excess costs for re-procurement of those Products or Services. However, Seller shall continue the work not terminated. Seller shall also be responsible for costs or damages which Buyer incurs or for which Buyer is responsible as a result of or in connection with Seller’s default.

C. If the Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Products, (2) partially completed Products, supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that
Seller has specifically produced or acquired for the terminated portion of the Order; (3) Property and Tooling; and (4) Intellectual Property. 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 or Intellectual Property.

D. If Buyer terminates the Order in whole or in part for default, Buyer shall not be required after such notice to accept the tender by Seller of any Products or Services hereunder with respect to which Buyer has elected to terminate the Order.

E. The rights and remedies of Buyer in this Termination for Default clause are in addition to any other rights and remedies provided by law or equity or under the Order.

20. EXCUSABLE DELAY

A. If the delivery of any Product or the performance of any Service is delayed by unforeseeable circumstances beyond the control and without the fault or negligence of Seller or any tier of its suppliers or subcontractors (any such delay being hereinafter referred to as “Excusable Delay”), the schedule for delivery of such Product or performance of such Service may be revised as determined by Buyer.

B. Excusable Delays may include, but are not limited to, acts of God, war, riots, acts of government, fires, floods, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather, but shall exclude Seller’s noncompliance with any rule, regulation or order promulgated by any governmental agency. However, the above notwithstanding, Buyer expects Seller to continue production, recover lost time and support all schedules as established under the Order. Therefore, it is understood and agreed that (i) delays of less than two (2) calendar days’ duration shall not be considered to be Excusable Delays unless such delays shall occur within thirty (30) calendar days prior to the scheduled delivery date of any Product and (ii) if delay in delivery of any Product or performance of any Service is caused by the default of any tier of Seller’s suppliers or subcontractors, where a substitute is available, such delay shall not be considered an Excusable Delay.

C. Seller shall give to 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 the effects of the Excusable Delay. In addition, Seller shall endeavor to make available to Buyer substitute Products or Services in an adequate quantity, at no additional charge to Buyer.

21. STOP WORK

A. Buyer may, at any time, by written direction to Seller, require Seller to stop all or any part of the work called for by the Order for a period of up to ninety (90) calendar days after such written direction is delivered to Seller, at no cost to Buyer, and for any further period to which the Parties may agree. Any such written direction shall be specifically identified as a Stop Work Order (“SWO”) issued pursuant to this Stop Work clause. Upon receipt of an SWO, Seller shall immediately comply with its terms. Within the period of the work stoppage specified by the SWO and any amendments to the SWO, Buyer shall either (1) cancel all or part of the SWO, or (2) terminate all or part of the work covered by such SWO as provided in the Termination for Convenience clause herein.

B. To the extent an SWO issued under this Stop Work clause is canceled, or the period of the work stoppage specified by the SWO or any extension thereof expires, Seller shall resume work and the Parties will agree upon a reasonable adjustment to the delivery schedule.

22. NON–CONFORMING PRODUCTS OR SERVICES.

A. To the extent the Order is an order for Products, the following subparagraph shall apply:

Buyer and Seller agree that the Products ordered pursuant to the Order are unique. Seller shall deliver Products that conform to the terms of the Order as stated in the Seller’s Obligations clause. If Seller fails to deliver such Products, or delivers defective or non-conforming Products, Buyer may:

(1) Return all or any part of a delivery of defective or non-conforming Products at Seller’s cost, and debit Seller’s account, demand a refund and/or require delivery of conforming Products;
(2) Retain all or any part of the defective or non-conforming Products at an equitable price reduction;
(3) Make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Products to comply in all respects with the terms of the Order, and charge the cost thereof to Seller; or
(4) Terminate the Order, in whole or in part, for default.

B. To the extent the Order is an order for Services, the following subparagraph shall apply:

Seller shall provide Services that conform to the terms of the Order as stated in the Seller’s Obligations clause. If Seller fails to provide such Services, or provides defective or non-conforming Services, Buyer may:

(1) Debit Seller’s account, demand a refund and/or require correction or re-performance of defective or non-conforming Services at Seller’s cost;
(2) Retain all or any part of the defective or non-conforming Services at an equitable price reduction;
(3) Perform, or have a third party perform, replacement Services that comply in all respects with the terms of the Order, and charge the cost thereof to Seller; or
(4) Terminate the Order, in whole or in part, for default.

C. The following subparagraph shall apply to all orders:

In the event that Seller provides defective or non-conforming Products or Services, or otherwise fails to conform to the terms of the Order, Seller shall be responsible for costs or damages which Buyer incurs or for which Buyer is responsible as a result of or in connection with such defect(s) or non-conformance.

THIS NON–CONFORMING PRODUCTS OR SERVICES CLAUSE DOES NOT LIMIT BUYER’S RIGHTS OR REMEDIES UNDER ANY OTHER PROVISION OF THIS ORDER OR AS PROVIDED BY LAW OR EQUITY.

23. WARRANTY

A. To the extent the Order is an order for Products, the
following subparagraphs shall apply:

(1) Seller warrants to Buyer and Buyer’s customers that all Products delivered under the Order will: (i) be free from defects in materials, workmanship, and manufacturing processes; (ii) be suitable for the purposes intended whether expressly or reasonably implied; (iii) conform to the terms of the Order, including but not limited to applicable drawings, specifications; (iv) be free from defects in design for any Products unless the design was furnished by Buyer; and (v) be free of all liens and encumbrances. The warranties set forth above shall remain in effect for forty-eight (48) months after delivery to Buyer. Buyer may give notice to Seller of any breach of the warranties set forth herein no later than six (6) months after expiration of the warranty period set forth above, and notice must be given within such time period except for latent defects, gross negligence, fraud, or such gross mistakes as amount to fraud.

(2) If any Product fails to comply in any respect with the warranties set forth above and Seller has been given notice of such noncompliance within the period of time set forth above, Buyer shall have the option, in its sole discretion, at Seller's expense, to (i) return such Product and debit Seller’s account or demand a refund; (ii) require Seller to promptly make all repairs, modifications, or replacements (the "Corrections") necessary to enable such Product to comply in all respects with such warranties; (iii) make, or have a third party make, all Corrections necessary to enable such Product to comply in all respects with such warranties; or (iv) terminate the Order, in whole or in part, for default.

(3) In addition to the actual cost of any Corrections, Seller shall also be responsible for (i) reasonable costs incurred in the removal and reinstallation of the noncompliant Products; (ii) reasonable administrative costs incurred by Buyer in identifying, determining the disposition of, and processing required documentation for the noncompliant Products; (iii) reasonable transportation and insurance costs for Products corrected pursuant to the provisions of this Warranty clause; (iv) reasonable delay and disruption costs incurred by Buyer; and (v) other costs or damages which Buyer incurs or for which Buyer is responsible.

(4) Any Products to which Corrections have been made by Seller, Buyer, or a third party under this Warranty clause shall be warranted by Seller for twelve (12) months after the date of such Corrections or the unexpired remaining of the warranty period as specified herein, whichever period is greater. However, Seller shall not be held liable for defects or failures attributable to misuse or negligent Corrections by Buyer or any third party.

(5) If Buyer requires Seller to make Corrections to any noncompliant Products, Seller shall ensure that Buyer receives such corrected or replacement Products within a period of fifteen (15) calendar days from receipt of Buyer’s notice, unless a longer period is approved by Buyer in writing.

(6) Seller shall process and reimburse Buyer for any claim by Buyer for amounts owed by Seller under this Warranty clause within ten (10) calendar days after receipt of Buyer's claim. In the event Buyer’s claim is disallowed by Seller, such disallowance shall constitute a dispute within the meaning of the Disputes and Governing Law clause hereof.

(7) Seller's obligation to meet the delivery schedule established in the Order shall not be affected by any Corrections made pursuant to this Warranty clause.

(8) Buyer's rights under this Warranty clause shall, at Buyer's option, be assignable to and enforceable by Buyer’s customers and their customers.

(9) 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 Order, or in law or equity.

B. To the extent the Order is an order for Services, the following subparagraph shall apply:

Seller warrants that all Services performed under the Order will be performed in accordance with the standards of care and diligence normally exercised by persons performing such Services in the industry, be free from defects in workmanship, and conform to the terms of the Order. At Buyer’s option, Seller shall either (1) correct or re-perform any defective or noncompliant Services at no cost to Buyer or (2) refund the fees for such Services. 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 Order, or in law or equity.

24. BUYER ASSISTANCE

In the event that Buyer or Buyer’s customer determines that Seller’s delay or failure to perform under the Order requires Buyer’s or Buyer’s customer’s technical and/or manufacturing assistance, Buyer may provide technical and/or manufacturing assistance at Seller’s cost, at such level and scope, and for such period of time, as is reasonably necessary to remedy and/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 Order or as provided by law or equity.

25. DISPUTES AND GOVERNING LAW

A. Any dispute arising under or relating to the Order shall be reduced to writing and submitted to the other party. The manager of Buyer’s Authorized Purchasing Representative and Seller’s equivalent manager or executive shall use their best reasonable efforts to resolve the dispute. If they are unable to resolve the dispute within thirty (30) calendar days after submission of the dispute, Buyer’s Chief Procurement Officer and Seller's equivalent level executive shall attempt to resolve the dispute.

B. For any dispute that cannot be resolved to both Parties’ mutual satisfaction within sixty (60) calendar days after the initial submission of the 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 Texas. Pending final resolution of any dispute, Seller shall proceed diligently with performance of the Order.

C. Both Parties agree that, irrespective of the place of performance of the Order, the Order will be construed and interpreted according to the law of the State of Texas, excepting that state’s laws on conflicts of law.
E. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY 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 CONNECTED WITH THE ORDER, 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.

F. To the extent the Order is for Products or Services that will be used, incorporated, delivered, or provided in the performance of a United States Government Prime Contract or Subcontract, and notwithstanding any provisions herein to the contrary, if a dispute under the Order involves issues which can be included in a claim by Buyer pursuant to the "Disputes" provisions of its higher-tier contract:
   (1) Buyer may include such issues in a claim against the Government or higher-tier contractor pursuant to the disputes procedure of Buyer's higher-tier contract and Buyer may invite Seller to participate in the prosecution and share in the expense of such dispute; or
   (2) Seller may at its own expense and subject to Buyer approval (which shall include a sponsorship agreement) and in the name of Buyer, submit such issues to the higher-tier contractor. Seller shall provide a certification in accordance with Federal Acquisition Regulation ("FAR") 52.233-1 and a copy of the claim package prior to Buyer approval.

(3) If, in accordance with (1) or (2) above, Seller prosecutes or participates in the prosecution of such higher-tier contract dispute, Seller shall not resort to other means for settling the related issues involved under the Order; and Seller shall abide by the final decision of such higher-tier disputes procedure, provided Buyer, if it chooses not to exhaust its right of appeal under such procedure, gives Seller the opportunity to take any available appeal.

26. SET-OFFS
Buyer shall have the right to set off against any Seller invoice any amount owing by Seller to Buyer.

27. 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 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 Order. Seller shall also provide updated reports throughout the dispute duration.

28. PAYMENT FOR LABOR AND MATERIAL; WAIVER OF LIENS
A. Seller shall be responsible for the prompt payment of all persons who perform labor upon or furnish services, materials, equipment, supplies or other items used or to be used in the performance of the Order.
B. Seller shall:
   (1) Indemnify, defend, and hold harmless Buyer from any and all claims, demands, causes of action or suits, of whatever nature and any and all laborer's, material men's and mechanic's liens upon real property owned or controlled by Buyer, including any fixtures and improvements located thereon, and any personal property and assets of Buyer, arising out of or relating to the services, labor and materials furnished by Seller or any of its suppliers or subcontractors under the Order; and
   (2) Keep such property free and clear of all liens, claims and encumbrances arising out of or relating to the performance of the Order by Seller or its suppliers or subcontractors.
C. Seller, for its suppliers, subcontractors, material men, laborers and for all other persons performing any labor or furnishing any services, materials, equipment, supplies or other items used or to be used for any of the work, hereby waives and releases, to the full extent permitted by law, any and all liens, rights in liens, and claims on or against any real property owned or controlled by Buyer, including any fixtures and improvements located thereon, and any personal property and assets of Buyer.

29. INDEMNITY AND INSURANCE
A. During the entire period of the Order and irrespective of the place of performance, Seller, at its own expense, shall procure and maintain, and shall cause its subcontractors to procure and maintain, the following insurance coverages in the minimum limits indicated:
   (1) Commercial General Liability insurance coverage, written on an "occurrence" basis with a combined single limit of at least $1,000,000 per occurrence, and $2,000,000 in the aggregate for bodily injury and property damage in a form providing coverage of not less than a standard commercial general liability policy, including premises-operations coverage, broad form property damage liability coverage, products/completed operations coverage, and broad form contractual liability coverage with liability limits equal to at least the above limits. The insurer on this coverage shall name Buyer as an additional insured and shall waive subrogation against Buyer.
   (2) Aviation General Liability insurance coverage, including aircraft liability, premises liability, products and completed operations liability and grounding liability, and shall cover bodily injury and property damage in an amount not less than $100 Million per occurrence arising out of or resulting from Seller’s performance under the Order. The insurer on this coverage shall name Buyer as an additional insured.
B. If performance of the Order requires entry onto Buyer’s or Buyer’s customers’ premises or a Government installation, Seller, at its own expense, shall also procure and maintain, and shall cause its subcontractors to procure and maintain, the following additional insurance coverages in the minimum limits indicated:
   (1) Workers’ Compensation and Employer’s Liability insurance coverages for all of its employees and
representatives. The Workers’ Compensation coverage shall be as required by the law(s) of the state(s) or country, as applicable, in which the work is performed. The Employer's Liability insurance limit shall be at least $1,000,000. The insurer on this coverage shall waive subrogation against Buyer.

(2) Automobile Liability insurance, with a combined single limit of at least $1,000,000 per occurrence for bodily injury and/or property damage, covering all hired, owned, and non-owned vehicles. The insurer on this coverage shall name Buyer as an additional insured and shall waive subrogation against Buyer.

C. Seller shall procure and maintain and shall cause its subcontractors to procure and maintain, at their own expense, property insurance covering the loss or destruction of or damage to any property in its possession in which Buyer has an interest pursuant to the Order. Such property insurance shall provide coverage in the amount of the full replacement value thereof, providing protection against all perils normally covered in an “all-risk” policy, including but not limited to fire, windstorm, explosion, riot, civil commotion, aircraft, earthquake, flood, or other acts of nature, during such time as such property remains in Seller’s possession. Any such policy shall (1) provide for payment of loss thereunder to Buyer, as loss payee, as its interests may appear and (2) contain a waiver of any rights of subrogation against Buyer. Seller shall give prompt written notice to Buyer of the occurrence of any damage or loss to any property required to be insured under this paragraph C. If any such property shall be damaged or destroyed, in whole or in part, by an insured peril or otherwise, then Seller may, upon written notice to Buyer, settle, adjust, or compromise any and all such loss or damage not in excess of Fifty Thousand Dollars ($50,000).

D. Seller shall procure and maintain, at its own expense, Marine Cargo and Inland Transit insurance covering the loss or destruction of or damage to any such property for which Seller has transit risk of loss responsibility under the Order. Such insurance shall be in an amount equal to the invoice price or the stated value of such property.

E. All insurance required under the Order shall be procured from insurers authorized to do business in the state(s) or country, if applicable, in which the work is performed, and each insurer (including reinsurers) must maintain a financial strength rating of “A-VII” or better as rated by A.M. Best Key Rating Guide for property and casualty insurers. All of Seller’s insurance coverages shall be primary and without contribution from any insurance coverages which may otherwise be carried by Buyer. Each reinsurance policy, if any, shall have a market standard “cut-through” endorsement.

F. All required insurance must be in place and effective prior to the commencement of performance under the Order. Proof of the existence of all required insurance coverages must be provided to Buyer in the form of insurance certificates prior to the start of any work under the Order, and thereafter upon Buyer’s request. Certificates of insurance evidencing replacement insurance coverages, as required, shall be furnished to Buyer concurrent with the renewal of any required insurance coverages. In the event of cancellation or material change to any required insurance coverage, Seller shall provide Buyer with thirty (30) days’ prior written notice (10 days’ notice of cancellation for non-payment of premium, or, in the case of war risk and allied perils coverage, 7 days’ notice of cancellation), or such other period as may from time to time be customarily obtainable in the industry. None of the requirements contained herein as to insurance coverage to be maintained by Seller is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Seller under the Order or otherwise provided by law.

G. In addition to any other indemnification provisions of the Order, Seller shall indemnify, defend, and hold harmless Buyer, its officers, directors, employees, agents and customers from any and all claims, demands, causes of action, liabilities, losses, damages, costs, and expenses, including attorneys’ fees, for actual or alleged (1) injury to any person, (2) damage to any property, or (3) violation of any law, ordinance, or regulation, including any penalties or fines, arising from or related to Seller’s performance of the Order.

30. EXPORT AND IMPORT COMPLIANCE

A. Seller shall comply with the laws and regulations of the United States relating to exports, imports, and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), the Arms Export Control Act, the International Emergency Economic Powers Act (IEEPA), Title 19 (Customs Duties) of the Code of Federal Regulations, and regulations and orders administered by the Treasury Department’s Office of Foreign Assets Control.

B. Seller shall not disclose any technical data, nor deliver or export any Product manufactured by use of technical data, (1) out of the United States, (2) to a national of a third country, or (3) to foreign persons within the United States, without proper authorization from the U.S. Government.

C. Upon Buyer’s request, Seller shall notify Buyer of the Harmonized Tariff Systems Numbers and the Export Control Classification Numbers (“ECCNs”) for the Products, as well as the ECCNs for any components or parts thereof (if different from the associated Product(s)).

D. If the Order supports commercial aircraft end use, Seller represents and warrants that (1) the Products, and the parts and components thereof, provided under the Order are not “defense articles” (as defined in the ITAR) and (2) the Services provided under the 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, and the 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.

E. To the extent that any Products, or any parts or components thereof, were specifically designed or modified for a military end use or end user, Seller shall notify Buyer of this fact and shall provide Buyer written confirmation from the U.S. Department of State that such Products, and all such parts and components thereof, are not subject to the ITAR.

F. If Seller is not a U.S.-based entity or person, the following additional subparagraphs shall apply:

(1) Where applicable, if Buyer or Seller is unable to obtain any required governmental approvals or licenses relating to import or export of Products, materials, or
technical data relating to the Order, Buyer may terminate
the Order, in whole or in part, without liability to Seller.
(2) Export licenses under which technical data was
exported must be renewed upon their expiration if
performance under the Order extends beyond the period
of validity of the license. In the event Buyer is unable to
obtain such renewal, Buyer may terminate the Order, in
whole or in part, without liability to Seller.

G. Seller shall include the substance of this Export and
Import Compliance clause in Seller’s orders and subcontracts
issued at all tiers pursuant to the Order.

31. OFFSET COMMITMENT
A. Notwithstanding that the Order is or is not made in direct
support of a foreign sale, Seller agrees to cooperate with
Buyer in supporting Buyer’s international offset commitments.
B. Buyer shall be entitled to all of the offset credits arising
out of or resulting from, directly or indirectly, the Order,
including the value of any orders or subcontracts placed by
Seller for the Order, and Buyer may use all or any part of such
credits for satisfying past, present or future international offset
obligations of Buyer or any third party to which Buyer
transfers such value. Seller shall include the substance of this
Offset Commitment clause, in favor of Buyer, in Seller’s
orders and subcontracts issued at all tiers pursuant to the
Order.
C. Upon Buyer’s request, Seller shall (i) report all order or
subcontract sources outside the United States utilized in the
fulfillment of the Order, including the name and location of
each such source, amounts paid and committed thereto,
identification of the products or services procured, and copies
of the related orders or subcontracts, (ii) require its suppliers
and subcontractors, including those at all lower tiers, to
maintain records of the above information, and (iii) take all
necessary actions and execute all necessary documents to
secure and evidence Buyer’s right to use or transfer any offset
credits.

32. BADGES AND SECURITY
If the Order requires Seller’s personnel to enter Buyer’s or
Buyer’s customers’ premises, Seller agrees to have its
personnel report to the location(s) designated by Buyer, at
times specified by Buyer, so that Buyer may provide such
personnel with identification badges. Seller further agrees that
such badges shall be worn by such personnel, in a conspicuous
place upon the person of each such personnel, when such
personnel are in, on, or about the premises. Seller further
agrees to comply with, and require its personnel to comply
with, such rules and regulations pertaining to security as may
be prescribed by Buyer and/or Buyer’s customers from time to
time.

33. ASSIGNMENT
A. Seller shall not assign (by operation of law, merger or
otherwise) the Order or any of its rights or obligations under
the Order without Buyer’s prior written consent, which shall
not be unreasonably withheld, and any assignment by Seller
without Buyer’s prior written consent will be null and void.
B. Seller shall not furnish or disclose to any assignee under
the Order any Proprietary Information until and unless
authorized to do so by Buyer.

C. Subject to this Assignment clause, all of the terms,
agreements, covenants, representations, warranties and
conditions of the Order are binding upon, and inure to the
benefit of and are enforceable by, the Parties and their
respective successors and assigns.

34. NOTICES
A. All notices provided for or required to be given to Buyer
under the following clauses: (a) Intellectual Property, (b)
Proprietary Information, (c) Disputes and Governing Law, (d)
Assignment, (e) Property and Tooling, (f) Excusable Delay,
(g) Labor Disputes, (h) Indemnity and Insurance, and (i)
Notification of Status Changes, must be in writing and given
by personal delivery, by certified or registered mail (postage
prepaid, return receipt requested), by an internationally
recognized overnight delivery service for next day delivery, as
follows (or to such other address as Buyer may give in a
notice given in accordance with the provisions hereof):
   If to Buyer:
   Triumph Aerostructures - Vought Aircraft Division
   Attention: Procurement Contract Administration
   1401 Nolan Ryan Expressway
   Suite 300
   Arlington, TX  76011
B. All such notices to Buyer will be effective and deemed
given only as follows: (i) if given by personal delivery, upon
such personal delivery, (ii) if sent by certified or registered
mail, on the date of delivery as confirmed by written
confirmation of delivery, or (iii) if sent by overnight delivery
service, on the date of delivery as confirmed by written
confirmation of delivery. Any such notices sent to Buyer in
any other manner, including by electronic mail, will not be
effective.
C. Any communications between the Parties other than
those described above shall be directed to Buyer’s Authorized
Purchasing Representative and Seller’s designated
representative, in the manner designated by Buyer’s
Authorized Purchasing Representative.

35. NOTIFICATION OF STATUS CHANGES
By accepting the Order, Seller certifies that all representations
and certifications included in the Subcontractor Annual
Compliance Certification (“SACC”), if applicable, and the
Supplier Capability Questionnaire remain valid. If Seller’s
status under any of the applicable representations and
certifications has changed, Seller must immediately complete
and submit to Buyer a new SACC or Supplier Capability
Questionnaire.

36. RELEASE OF 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
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 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
37. RELIANCE
Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting the Products and Services provided under the Order, and Seller agrees that Buyer is relying on such representation and warranty by Seller. Seller agrees that it will not deny any responsibility or obligation to Buyer on the basis that Buyer approved any documentation prepared by Seller, or participated in design reviews or first article approval processes or similar reviews, or that Buyer or Buyer's customers provided documentation, specifications, recommendations, or assistance in any phase of the work required to produce or support the Products and Services. Seller acknowledges that it has had an opportunity to review relevant documentation. Seller further warrants that it conducted such a review, that it notified Buyer in writing of any missing documentation, deficiencies or concerns that Seller identified in any documents, and that the issues raised by Seller were adequately addressed.

38. INDEPENDENT CONTRACTOR STATUS
The relationship of Seller to Buyer shall be that of an independent contractor, 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 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 Order, and shall be responsible for all reports and obligations for such persons, including, but not limited to, Social Security and income tax withholdings, unemployment obligations for such persons, including, but not limited to, Social Security and income tax withholdings, unemployment compensation, worker’s compensation premiums, and equal employment opportunity reporting.

39. COMPLETE AGREEMENT
Except as provided in the Proprietary Information clause, any Vendor Managed Inventory Agreement, and/or any Electronic Commerce Agreement entered into by and between the Parties, the 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 Order.

40. 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 Order pursuant to the Termination for Default clause herein. The rights and remedies of Buyer in this Gratuities clause are in addition to any other rights and remedies provided by law or equity under the Order.

41. COMPLIANCE WITH LAWS
Seller warrants that it shall comply with all applicable Laws.

For purposes of this Compliance with Laws clause and the Toxic or Hazardous Material or Substances clause, the term “Laws” shall mean any law (statutory, common, or otherwise), constitution, treaty, convention, ordinance, equitable principle, code, rule, regulation, order, or other similar authority enacted, adopted, promulgated, or applied by any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or other similar recognized organization or body exercising similar powers or authority, each as amended and now and hereinafter in effect.

42. TOXIC OR HAZARDOUS MATERIAL OR SUBSTANCES
A. Seller warrants that, if the Order involves delivery of any hazardous material, the packaging and shipment of such material will be made in accordance with all applicable Laws, and Seller shall submit a copy of a current Materials Safety Data Sheet (MSDS) to Buyer’s Safety Manager prior to delivery of any hazardous material.
B. 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, Authorisation 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 that all such Products and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or notified and/or authorized under REACH, if pre-registration, registration, notification, and/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 Order.
C. In addition to the foregoing obligations, Seller shall, at Seller’s expense, timely provide Buyer with all relevant information, on the Products and any substances contained therein or utilized in the production thereof, as Buyer determines to be necessary for Buyer and/or Buyer’s customers to timely and accurately fulfill their obligations under REACH and other applicable Laws.

43. PARTIAL INVALIDITY
If any provision in the Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

44. NON-WAIVER
A party’s failure at any time to enforce any provision of any Order shall not constitute a waiver of such provision or prejudice a party’s right to enforce such provision at any subsequent time.

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

46. 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
the 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 Order until seven (7) years after final payment
under the Order. Seller shall provide assistance to interpret
such records and information, if requested by Buyer.

47. SURVIVAL
The terms and conditions of the Order regarding payment,
intellectual property, proprietary information, Property and
Tooling, warranties, disputes, and indemnification, and all others that by their sense and context are intended to survive
the performance, termination or expiration of the Order shall
survive and continue in effect.

48. RESERVED

49. INCORPORATION OF FAR AND DFARS
   CLAUSES
Seller shall comply with the terms set forth in Buyer’s
FAR/DFARS Flow-Down Addendum which is hereby
incorporated herein by reference into these Terms and
Conditions. Seller shall also comply with any and all
revisions to Buyer’s FAR/DFARS Flow-Down Addendum, as
may be posted on Buyer’s Supplier Website from time to time.
It is Seller’s obligation to monitor any such revisions.