



**Whitcraft**

**TERMS AND CONDITIONS OF PURCHASE**

**Rev. 04/2020**

1. **Definitions.** Capitalized terms used herein shall have the meaning ascribed to them below or as otherwise defined herein.

**“Affiliate”** means any entity controlling, controlled by, or under common control of a party to this Terms agreement.

**“Buyer”** means the particular legal entity issuing an Order. Buyer legal entities include Whitcraft LLC; A.O. Sherman, LLC; Reliable Manufacturing Company LLC; Connecticut Tool & Manufacturing Company, LLC; Dell Manufacturing Company, LLC; Acucut, LLC; Form 3D, LLC; Whitcraft Scarborough/Tempe, LLC; Multax, LLC; Whitcraft South Windsor, LLC; Berkshire Manufactured Products, Inc.; Turbine Engine Components Technologies Corporation; Turbine Engine Components Technologies – Utica Corporation; or any other Affiliate entity of Whitcraft LLC.

**“Buyer Materials”** means any and all materials (whether in raw, partially treated or finished or treated or finished form), samples, models, tooling, dies, jigs, fixtures, plans, designs, specifications, software, drawings, technical or other information, intellectual property rights, contract rights or other tangible or intangible things provided by Buyer to Seller for Seller’s use in fulfillment of this Order paid for by Buyer (in addition to the price of the Products) or, if specified on this Order or by mutual agreement in writing, to be paid for by Buyer (in addition to the price of the Products).

**“Contracting Officer”** means a U.S. Government Contracting Officer for a Prime Contract.

**“Order”** means any purchase order issued by a Buyer to Seller, whether issued electronically, by fax, in writing or other means, referencing these Terms.

**“Prime Contract”** means any contract between Buyer or any of its customers, on the one hand, and the United States Government, on the other hand, under which this Order is issued and as may be specified on the Order.

**“Product(s)”** means the good(s) and/or service(s) described in this Order.

**“Seller”** means the person or business entity to which this Order is placed by Buyer.

**“Seller Materials”** means any and all materials (whether in raw, partially treated or finished or treated or finished form), samples, models, tooling, dies, jigs, fixtures, plans, designs, specifications, software, drawings, technical information, intellectual property rights, contract rights or other tangible or intangible things required by Seller to supply the Products to Buyer in accordance with these Terms, except Buyer Materials.



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**“Term”** means the period commencing upon the date this Order is accepted pursuant to section 3 and ending when all of Seller’s obligations under this Order have been fully satisfied in accordance with these Terms, unless another period is specified in this Order.

**“Terms”** means these Whitcraft Terms and Conditions of Purchase that are in effect upon Order acceptance. These Terms may be updated from time to time and are available upon request.

**2. Applicable to All Orders.** These Terms are incorporated into each Order that Buyer issues to Seller as if they are fully written in the Order. Each reference to “this Order” in these Terms means and shall be interpreted as “this Order (including these Terms),” unless specified herein to the contrary.

**3. Order Acceptance & Purported Modifications.** This Order is Buyer’s offer to buy from Seller the Products that are the subject of this Order. Seller shall be deemed to have accepted this Order upon the first to occur of: (i) Seller’s express acknowledgement or acceptance of this Order, (ii) Seller’s failure to reject this Order in writing within 5 business days after receipt, (iii) Seller’s commencement of manufacturing any Products that are the subject of this Order, and (iv) delivery of any of the Products pursuant to this Order. EACH MODIFICATION TO THIS ORDER OR THESE TERMS (INCLUDING ANY PURPORTED DELETION, ADDITION OR MODIFICATION TO THEM IN SELLER’S ACCEPTANCE THEREOF OR IN ANY SUBSEQUENT SHIPPING, INVOICE OR OTHER DOCUMENTATION SENT BY SELLER) ARE HEREBY REJECTED BY BUYER AND SHALL NOT BE BINDING ON BUYER UNLESS SUCH DELETION, ADDITION OR MODIFICATION IS SPECIFICALLY ACCEPTED IN WRITING (OR AUTHENTICATED IF THESE TERMS FORM PART OF AN ELECTRONIC ORDER) BY BUYER’S AUTHORIZED PROCUREMENT REPRESENTATIVE. IF BUYER’S AUTHORIZED PROCUREMENT REPRESENTATIVE SPECIFICALLY ACCEPTS ANY DELETION, ADDITION OR MODIFICATION OF THESE TERMS, THEN ONLY THE PORTION THEREOF SPECIFICALLY ACCEPTED SHALL BE BINDING UPON THE PARTIES, AND ALL OTHER PORTIONS NOT SPECIFICALLY ACCEPTED BY SUCH REPRESENTATIVE ARE REJECTED AND DO NOT FORM PART OF THIS ORDER.

**4. Changes to an Order.** (a) Buyer may at any time prior to delivery being made in accordance with an Order, by written notice (“**Order Change Notice**”), make changes within the general scope of an Order to any one or more of the following: (i) drawing, designs or specifications for any of the Products; (ii) method of shipment or packaging; (iii) place of inspection, delivery or acceptance; (iv) amount of Buyer Materials; (v) quantity of any one or more of the Products; (vi) delivery schedule; and (vii) quality requirements.

(b) Upon receipt of the Order Change Notice, Seller shall immediately proceed with the change to the Order as directed by Buyer. If any change is the sole cause of a material increase or decrease in the cost of, or the delivery time for, the supply of any Products under the affected Order, then Seller (in the case of an increase) or Buyer (in the case of a decrease) shall be entitled to an equitable adjustment in the purchase price or delivery schedule or both, as applicable. Seller must assert its claim for such equitable adjustment in writing to Buyer within twenty-one (21) days from the date of the Order Change Notice, or Seller’s claim for such equitable adjustment is thereby waived. If Seller asserts an equitable adjustment claim to Buyer, Seller shall demonstrate, in reasonable detail, the impact of such change on the cost or delivery time of the Product(s) alleged to be so affected and that all of such impact was



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caused by such change. In every case, Seller shall immediately proceed with the change as directed by the Order Change Notice.

(c) Notwithstanding section 4(b), with respect to delivery schedule changes only, if Buyer provided Seller with at least four (4) weeks of notice in its Order Change Notice, then Seller shall perform such schedule changes at no cost to Buyer.

(d) Seller shall use its best efforts to support all Order Change Notices and nothing in this section 4 shall excuse Seller from immediately proceeding with an Order Change Notice.

(e) Seller may not deviate from an Order, or any other written agreement that may apply to an Order and cannot make any changes to the Product or processes (including drawings, data, specifications, etc.) without obtaining formal, written authorization from Buyer.

**5. Stop Work Notice.** (a) When directed by written notice from Buyer, Seller shall immediately stop all or part of the work relating to this Order for the Products and duration specified in the notice (“**Stop Work Notice**”); provided, however, that Buyer may not issue a Stop Work Notice for a period of more than one hundred eighty (180) calendar days from the date of the notice without the written consent of Seller.

(b) If Buyer cancels a Stop Work Notice or if the period therein or in any agreed extension thereof expires, then Seller shall resume work under this Order, and Buyer and Seller will agree upon a reasonable adjustment in the delivery schedule, which shall be approximately the time then remaining to fulfill this Order, on a Product by Product basis, when the Stop Work Notice was issued. In no event shall such adjustment exceed 30% more than such amount of time. A Stop Work Notice shall not affect the applicable pricing for any of the Products in this Order.

**6. Termination for Convenience.** (a) Buyer may, by written notice to Seller, terminate for Buyer’s convenience the whole or any part of this Order. A partial termination of this Order has no effect on the portion of this Order not terminated.

(b) Upon receipt of any such notice of termination, the Seller shall: (i) immediately cease all work under the portion of this Order so terminated, including but not limited to the further manufacture and procurement of materials for the fulfillment of the terminated portion of this Order’ (ii) unless instructed to the contrary in the termination notice, within twenty (20) days after receipt of such notice, deliver to Buyer all Products that are the subject of the termination, whether such Products are then completed or are partially completed and all Buyer Materials and Seller Materials, in each case, to the extent associated with such terminated portion of the Order; and within thirty (30) days after receipt of such notice, provide Buyer with a report describing the status of all Products (including the degree to which each Product was finished), the inventory and procured cost of Seller Materials and the inventory of Buyer Materials (if any), in each case, at the time of receipt of the termination notice.

(c) Promptly after receipt of the report issued in accordance with section 6(b), Buyer and Seller will discuss, and Seller shall be entitled to, an equitable termination fee for the terminated portion of



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this Order equal to the lesser of: (i) the total price of the Products that were the subject of the terminated portion of this Order and (ii) the sum of (a) the applicable price of any fully completed Products requested by Buyer to be delivered to Seller and so delivered, (b) Seller's actual direct cost associated with all completed Products not requested to be delivered to Buyer, (c) Seller's actual direct cost associated with all works in process at the time of termination, and (d) Seller's actual direct cost associated with all Seller Materials not coverable. Notwithstanding the foregoing, Seller shall not be entitled to any such fee for any material or work(s) - in-process that is not received by Buyer or completed by Seller within Seller's quoted and/or published order lead-time.

**7. Termination for Default.** (a) If the Seller is in default in carrying out any of its obligations under this Order, Buyer may give the Seller notice of default. The Seller shall have ten (10) days (or more if authorized in writing from the Buyer) from the date of receipt of such notice in which to cure the default or to satisfy the Buyer that such default shall be cured within a period of time acceptable to the Buyer. Upon failure to cure the default, Buyer may give the Seller written notice of termination of all or part of this Order.

(b) Where the Seller becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Seller, or an order is made or a resolution passed for the winding up of the Seller, the Buyer may, upon giving written notice to the Seller, immediately terminate for default the whole or any part of this Order.

(c) Upon the giving of a notice provided for section 7 (A) or (B), the Seller shall have no claim for further payment for the portion of the Order terminated other than as provided in this Clause 7, but Seller shall be liable to the Buyer for all losses and damages which may be suffered by the Buyer by reason of the default, including any increase in the costs incurred by the Buyer in procuring the Products from another source. Nothing in this Clause 7 affects any obligation of the Buyer under law to mitigate damages, and Seller shall proceed with the portion of this Order not terminated.

(d) With respect to the portion of this Order terminated for default, the Buyer may require the Seller to transfer the title and deliver, as directed by the Buyer, any (i) completed Products, and (ii) Seller Materials that the Seller and its subcontractors have specifically produced or acquired for such portion of this Order. Upon direction of the Buyer, the Seller shall also protect and preserve all Buyer Materials in its possession.

(e) The Buyer shall pay the Order price for completed Products delivered and accepted in accordance with section 7(d). The Seller and Buyer shall agree on a reasonable amount of payment for Seller Materials delivered and accepted. Failure to agree will be a dispute to be resolved pursuant to section 21. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against losses incurred due to Seller's default, including outstanding liens or claims of former lien holders against Seller, and the Products and Buyer's estimate of excess re-procurement costs due Buyer.



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**8. Excusable Delay.** (a) If a Delay Event occurs, the party that is prevented by such event from performing any one or more obligations under this Order (“**Affected Party**”) will be excused from performing those obligations, on condition that (i) the Affected Party used reasonable efforts to perform those obligations, (ii) the Affected Party’s inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Delay Event, and (iii) the Affected Party complies with its obligations under section 8(c).

(b) For purposes herein, “**Delay Event**” means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Order, except that a Delay Event will not include a lack of financial resources of the Seller or its subcontractors, labor disturbances (including strikes and lockouts) of the Seller or its subcontractors, or any other breach by Seller or any of its subcontractors not caused by a Delay Event.

(c) Upon the occurrence of a Delay Event, the Affected Party shall promptly notify the other party of such occurrence, its effect on performance, and how long the Affected Party expects the Delay Event to last. The Affected Party shall update the information as reasonably necessary or requested by Buyer. During a Delay Event, the Affected Party shall use reasonable efforts to limit its damages and damages to the other party and to resume its performance under the Order as soon as possible. However, after a Seller’s Delay Event has continued for a period of thirty (30) days, the Buyer may terminate this Order or any portion thereof in accordance with section 7.

**9. Buyer Materials.** (a) Except as otherwise provided herein, Seller shall not use, reproduce, or disclose for the benefit of any party other than Buyer, any Buyer Materials. Seller shall not use the Buyer Materials to produce or manufacture any items other than the Products, without prior written authorization from Buyer.

(b) Buyer shall at all times retain title to Buyer Materials. Seller shall bear the risk of loss, damage or destruction of the Buyer Materials. If any Buyer Materials are lost, damaged, or destroyed while in Seller’s possession, Seller shall promptly replace or repair such at no cost to Buyer. Upon Buyer request, Seller shall provide Buyer with an inventory of any Buyer Materials in Seller’s possession. Upon termination or completion of this Order and at no cost to Buyer, Seller shall return all Buyer Materials to Buyer, unless otherwise directed by Buyer in writing.

(c) As Buyer Materials may be unique or proprietary and monetary damages would be inadequate to compensate Buyer for any Seller breach of this section 9, in addition to any other remedies available to Buyer under this Order, at law, or in equity, Buyer shall be entitled to seek injunctive relief to enforce the terms of this section.

(d) With respect to invoices for tooling to be paid for by Buyer, Buyer shall not be obligated to process or issue payment for such invoices until Buyer has accepted Products produced from such tools. As applicable to this Order, Buyer shall charge Seller for all Buyer Materials that are lost, damaged, or destroyed while in the possession of Seller at replacement value, and Seller shall pay for such in accordance with the payment terms herein, or as otherwise specified in the Order.



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**10. Intellectual Property.** (a) Any copyright, trademark, trade secret, software, data, idea, concept, process, formula, invention, system, report or other intellectual property resulting from any Seller work performed for this Order, shall be the sole property of Buyer. To the maximum extent permitted by law, any and all of the foregoing that constitutes copyrightable subject matter shall be deemed “work made for hire” under 17 U.S.C. §101. To the extent any of the foregoing is not deemed a “work made for hire,” then Seller agrees to assign and hereby assigns to Buyer any interest Seller may have in such intellectual property and Seller and its employees and contractors hereby waive any economic or moral rights relating to such intellectual property. Seller shall, and shall cause its employees and contractors to, promptly execute and deliver to Buyer any documentation reasonably requested by Buyer to further document ownership consistent with this Clause.

(b) With respect to any software contained within or required to use the Products, unless otherwise agreed in writing by the parties, Seller grants to Buyer a fully paid-up, worldwide, irrevocable and non-terminable license under all intellectual property rights owned by or licensed to Seller or any of its affiliates in such software and its related documentation, including, without limitation the rights to reproduce, distribute, create derivative works, display publicly, make, use, sell, offer for sale and import such software and documentation, in whatever form provided or stored, and products and processes incorporating or made using such software or documentation. The foregoing license includes the right to sublicense to affiliates and contractors of Buyer. Such software and documentation constitutes “intellectual property” as defined by 11 U.S.C. §101 and Buyer is entitled to all of the benefits of the U.S. Bankruptcy Code in connection therewith, including to the extent not in the possession of Buyer, the right to request and receive the source code form of such software to the extent reasonably requested by Buyer to exercise the rights licensed to it hereunder.

(c) With respect to any Seller Materials that constitute copyrighted subject matter, Seller grants to Buyer a fully paid- up, worldwide, irrevocable, and non-terminable license under all intellectual property rights owned by or licensed to Seller or any of its affiliates in such subject matter, including without limitation, the rights to reproduce, distribute, create derivative works of, display and perform publicly such subject matter, in whatever form it is kept, stored or provided. Such license includes the right to sublicense to affiliates and contractors of Buyer.

(d) Buyer grants to Seller a license under all of Buyer’s intellectual property rights in the Buyer Materials to use such materials to the limited extent strictly necessary for Seller to supply the Products to Buyer in accordance with this Order. Except as provided in the preceding sentence, Buyer does not grant to Seller any rights under any of Seller’s or its Affiliates’ intellectual property rights, by implication, estoppel or otherwise, and Seller reserves all such rights for itself.

**11. Quality Control, Audit, and Inspection.** (a) In addition to any specific quality assurance requirements stated in this Order, Seller shall provide and maintain a Quality Control System in accordance with the revision of ISO--9001 or AS/EN-9100 in effect as of the date of this Order or maintain a system approved by the Buyer, which includes quality systems for Seller’s design requirements, if applicable. Seller’s system shall also be in compliance with the requirements of the





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Seller's civil airworthiness authority and, as applicable, the Buyer's and Buyer's customers' quality requirements and specifications referenced in this Order.

(b) Buyer, Buyer's customers, U.S. Government or other regulatory agencies shall have the right at any time, upon reasonable notice, to: (a) conduct surveys and perform surveillance of Seller and Seller subcontractors; and (b) access and perform any type of inspection, test, audit or investigation at Seller's or Seller's subcontractor's premises, including manufacturing and test locations, and to spot check the Products, tools, equipment, molds, and manufacturing facilities to verify compliance with the requirements of this Order, or for any other purpose as indicated by Buyer's customer or regulatory authority that is in connection with the design, development, certification, manufacture, sale, use, or support of the Products. Seller shall provide appropriate facilities and assistance as reasonably necessary to support these activities at no cost to Buyer. Any corrective action reasonably requested by Buyer, Buyer's customers, U.S. Government, or other agency shall be implemented by Seller at no cost to Buyer.

(c) All Products are subject to inspection by Buyer at destination, notwithstanding any payment or prior inspection at Seller's point of shipment. The inspection will be made within a reasonable time, not to exceed ninety (90) calendar days after receipt of the Products. Buyer shall notify Seller if any Products received by Buyer are rejected, and such Products may be returned to Seller at Seller's risk and expense at Buyer's discretion. Inspection and tests by Buyer do not relieve the Seller of responsibility for costs of additional testing or for defects or other failures to meet this Order's requirements, including but not limited to latent defects or gross mistakes amounting to fraud.

(d) Seller is responsible to ensure that it is working to the latest version of all applicable specifications and other quality related documents. Seller shall notify Buyer of any defect or nonconformance related to the Product. However, Seller shall not ship any Product containing any defect or nonconformance without the written Buyer's written consent.

(e) Seller shall have an effective program for investigation, corrective action, and follow-up for rejections initiated by the Seller or Buyer. When the Buyer discovers any discrepancy for which the Seller is responsible, the Buyer may forward a request for corrective action to the Seller for action and response. The Seller's response shall be returned to the Buyer within Buyer's requested time frame, and shall include the causes of each discrepancy, the positive corrective action(s) taken to prevent its recurrence, and the corrective action effective date.

(f) Seller is responsible for complying with quality system requirements noted herein or on the face of any Order and for meeting quality performance expectations. Any use of statistical techniques by Seller to determine any Product inspection, acceptance, or other technical criteria must be approved by Buyer in writing. Seller will ensure that its employees are trained and aware of their contributions to Product quality and conformity as well as overall Product safety. Failure to comply with quality system requirements or to achieve an acceptable quality performance level may result in an on-site audit or additional source inspection oversight being initiated by Buyer, at Seller's expense. Buyer may debit Seller accounts to compensate for inspection or related activities that take place as a result of Buyer directed inspections, including source inspections being by-passed by the Seller.



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(g) Seller shall maintain quality records including traceability throughout all stages of manufacturing. No quality records shall be destroyed without the written consent of Buyer or its designee.

(h) Seller shall disclose all of its suppliers and subcontractors to Buyer and shall not make use of them unless Buyer approves of each in writing. Buyer may withhold or withdraw its approval of any such supplier or subcontractor at any time. Seller's suppliers or subcontractors may also be required to be approved by Buyer's customer(s) or end user(s), as applicable. The Seller shall ensure that all necessary requirements of the Order and these Terms are flowed down to Seller's supplier(s)/subcontractor(s) as required. The Seller shall immediately notify Buyer upon any change to the following in relation to all Products: (i) Seller's supplier; (ii) Seller's subcontractor; or (iii) Seller's facility location.

**12. Warranty.** (a) Seller warrants that all Products delivered under this Order: will, for thirty-six (36) months after delivery to Buyer's customers, conform to the specifications, drawings, samples, examples, trials, demonstrations, representations and descriptions thereof furnished to or by Buyer; are merchantable, of good material and workmanship and free from defects in design and manufacture (to the extent that Seller is responsible for such design); are suitable for the purpose intended; and are free and clear of all liens and security interests. Any Product delivered under this Order not meeting all of the foregoing criteria are "**Defective Products.**"

(b) In addition to any other remedy Buyer may have, Buyer may return Defective Products to Seller at Seller's expense. At Buyer's option and direction for any returned Defective Product, Seller shall promptly repair, replace, or issue Buyer a credit for, any returned Defective Product. Seller shall provide such repair, replacement, or credit no later than twenty (20) days from Buyer's notice thereof. Buyer may offset from any amounts due to Seller from Buyer, the amount of actual freight charges incurred in shipping Defective Products between Buyer and Seller. Buyer may also perform any necessary repair to Defective Products at its own facility and charge and offset the reasonable cost thereof to Seller.

**13. Books and Records.** Buyer shall have the right to audit all pertinent books and records of Seller and to inspect Seller's facilities to verify compliance with any requirements of the Order. Seller shall provide authorized representatives of Buyer reasonable access to Seller's books, records and data that permits the adequate evaluation of cost data, direct materials, labor hours and incorporated rates used to arrive at the price of Products or any of Seller's proposals for costs or prices pursuant to sections 4, 6, 7, or 9. At Buyer's request, Seller shall provide copies of collective labor agreements to which Seller is a party, if any, and Seller's audited company financial statements. Seller shall keep and maintain all books and records relating to the supply of Products hereunder for at least seven (7) years or such longer time required by applicable law or specified in this Order. Quality records shall be maintained in accordance with section 11 or as otherwise required by Buyer.

**14. Prices, Payments, and Discounts.** (a) Buyer shall make payments within sixty (60) days from the later of: (i) the acceptance date of the Products, or (ii) Buyer's receipt of an invoice that conforms to the requirements of this Order. Seller shall clearly state all discount terms (if any) on the face of each invoice. Payment discounts will also be calculated in accordance with the above.





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(b) Buyer may set-off any amounts due to it from Seller hereunder against any payments that are due to Seller from Buyer under the applicable Order or any other Order or agreement between Buyer and Seller. Buyer may also withhold from payment to Seller all reasonable amounts sufficient to reimburse Buyer for any loss, damage, expense, cost, or liability relating to any of Seller's failures to comply with any requirement of this Order or any other Order or agreement between Buyer and Seller.

**15. Invoicing, Packing, and Shipping.** (a) Seller shall provide separate invoices for each shipment under an Order. On such invoice, Seller shall clearly indicate Order number, line item number(s), quantity, unit price and extended value. At the time specified on the face of this Order, or if not specified, then on the date of shipment, Seller shall mail one copy of the invoice to the location specified for invoices on the face of this Order.

(b) Seller shall comply with the shipping and routing instructions shown on this Order. Premium transportation will be paid by Buyer only when specifically authorized by Buyer. If delays caused by the Seller result in the need for expedited transportation, the additional costs for the expedited transportation is the sole responsibility of the Seller. All shipments entirely within the U.S.A. shall be FCA Buyer's specified destination (Incoterms 2010) and all international shipments shall be DDP (Incoterms 2010) Buyer's specified destination, unless otherwise specified on the face of this Order.

(c) Seller shall include a packing list each shipment under this Order. Seller shall clearly mark the location of the packing slip on the container and cause the complete Order number to appear on all shipping documents.

(d) Seller shall identify each Product container of each shipment with the Order number, part number, and quantity of each part number. If multiple Orders or Products are combined into one container, Seller shall separately package each separate Order or Product inside the container and each package shall be identified as to Order number, part number, and quantity of each part number.

(e) Seller shall suitably package and prepare all Products for shipment to withstand normal transportation and stocking functions. Seller's containers and packaging shall be in compliance with best commercial practices and any special requirements indicated or referenced on the face of this Order.

(f) If required in this Order, Seller shall include all test reports, x-rays, certificates, or other supporting documents in each applicable shipment.

(g) Seller shall not combine shipments destined for different facilities or destinations on the same bill of lading or in the same container.

(h) Seller shall mark Products in such a manner as to be readily identifiable with the part number reflected on this Order. If applicable, Seller shall package all kits, assemblies, and all parts consisting of multiple Products (e.g. hardware, pins, gaskets, etc.) as a complete unit and so identified. If individually packaged, Seller shall mark such package as a single unit of the applicable part number. Seller shall separate single Products too small to be separately packaged or identified into lots for packaging, and



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tagged or bagged accordingly. Seller shall apply all proper markings corresponding to the Order description and part number to all tags and bags for handling and storage purposes.

(i) If required by Buyer, Seller will provide bar coded shipping labels with each shipment.

(j) Seller shall include a certificate of origin and country of manufacture and a certificate of compliance stating that the Products conform in all respects to their applicable warranties, with each shipment. Seller shall cause all such certificates to be signed by its authorized quality representative.

**16. Delivery.** (a) Seller is responsible for the Products until they are received at the destination point specified on the face of this Order. If Products are received more than five (5) days ahead of specified schedule, Buyer may either keep the Products and make payment as if the delivery was made per the specified delivery or return the Products to Seller at Seller's expense. The delivery dates contained in this Order are the dates that the Products are required on dock at the specified destination. In no event shall Buyer's acceptance of any early delivery accelerate any payment obligations of the Buyer.

(b) Time is of the essence in performing this Order. If Seller experiences or anticipates any delay in performing this Order, Seller shall immediately notify Buyer in writing of such delay, its expected duration, the reasons thereof, the action being taken to mitigate such cause of non-delivery and when on-schedule status will be regained. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of this Order's specified delivery schedule or of any rights or remedies of Buyer under this Order. The delivery schedule shall not be modified unless the parties do so in writing or as otherwise provided in Clause 4. Seller shall be liable for any damages resulting from a delay in delivery, and Seller shall, at its expense, take whatever reasonable action is necessary, with or without Buyer's request, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay in meeting such schedules. Such reasonable action by Seller shall include, but not be limited to, expedited shipment at Seller's expense.

(c) In addition and without prejudice to any of Buyer's other rights or remedies provided herein, Buyer may assess the following liquidated damages against Seller: (i) \$200.00 (USD) for each nonconforming Product delivered to Buyer under this Order; and (ii) \$100.00 (USD) for each day of delay for each Order that is not delivered by its specified delivery date. Buyer may charge Seller for such liquidated damages automatically as a debit memo issued to Seller's account. These liquidated damage amounts are only intended to compensate Buyer for certain reasonable, but difficult to calculate costs, expenses, and other damages directly resulting from Seller's failure to perform hereunder and shall be without prejudice to any of Buyer's rights to recover any other costs, expenses, or damages for which Buyer is otherwise entitled.

**17. Assignment.** Except as provided in this section, Seller may not assign this Order, any interest under the under, or any claim under the under without the prior written consent of Buyer. If Seller assigns this Order without Buyer's consent, such assignment is ineffective and void. Buyer's consent does not relieve Seller of its obligations to comply fully with the requirements of this Order. Seller may, without Buyer's consent, assign the rights to be paid monies due or to become due to a financing



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institution if the following conditions are met: (i) Buyer shall continue to have the right to exercise any and all of its rights under, settle any and all claims arising out of, and enter into amendments hereto, without notice to or consent of the assignee; (ii) the entire amount of said monies is assigned to a single assignee and (iii) Buyer is given notice of the assignment and all invoices submitted by Seller contain adequate reference to the assignment.

**18. Publicity and Confidentiality.** (a) Seller shall not advertise or publicize without Buyer's prior written consent, in any medium, including, without limitation, any print, broadcast, direct mailing, or any internet web site maintained by or for Seller, the fact that Seller is a supplier of products or services to Buyer. Seller shall not, and shall cause its subcontractors, suppliers and agents not to, without Buyer's prior written consent: (i) use Buyer's name, photographs, logos, trademarks, or any other identifying information in any such medium; (ii) use (except to communicate with Buyer or its affiliates) any internet domain names, metatags or electronic mail addresses of the Buyer or the name of any product or service for which Buyer owns the trademark; or (iii) provide a link to any domain name or internet address registered to Buyer or any of its Affiliates.

(b) The parties shall treat all information exchanged under this Order in accordance with any applicable confidentiality, non-disclosure, or equivalently named agreement between the parties effective as of the date of this Order. If no such agreement exists, then Seller shall not, without the prior written consent of Buyer: (i) disclose any Buyer Materials or other information provided by Buyer to Seller in connection with this Order to any third party, except to the limited extent required by applicable law and then only pursuant to a protective order that provides suitable restriction on disclosure, or (ii) use any of the foregoing other than as strictly necessary to fulfill Seller's obligations to Buyer under this Order.

(c) Anything owned by Buyer in accordance with section 10 is the confidential information of Buyer, regardless of whether such is marked accordingly or whether it originated from Buyer or Seller. Seller shall not use any such Buyer confidential information for any purpose other than fulfillment of Seller's obligations to Buyer under this Order or any other order or agreement between Seller and Buyer.

(d) Seller shall not disclose any of Buyer's confidential information to any person or entity other than Seller's employees that have a need-to-know such information for the foregoing purpose, unless otherwise agreed to in writing with Buyer.

**19. Indemnification.** Seller shall indemnify Buyer, its directors, officers and employees for each and every liability, loss, cost, claim, damage or expense including, but not limited to, reasonable attorneys' fees, of Buyer incurred relating to (i) any alleged or actual property damage or personal injury arising out of, as a result of, or in connection with the work performed in connection with this Order due to any act or omission of Seller or its employees, agents, subcontractors or lower tier subcontractors, (ii) any breach of any representation, warranty or covenant of Seller in this Order, and (iii) any claim that any of the Products or Seller's manufacture or supply thereof is defective in design or infringes or otherwise violates the intellectual property rights of any person or entity, except to the extent any such claim is based upon a design of a Product specified by Buyer.



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**20. Insurance.** (a) Seller shall maintain insurance coverage in amounts not less than the following: (i) Workers' Compensation- Statutory Limits for the state or states in which this Order is to be performed (or evidence of authority to self-insure); (ii) Employer's Liability-\$250,000; (iii) Comprehensive General Liability (including Products/Completed Operations) — \$2,000,000 per person, \$2,000,000 per occurrence Personal Injury, and \$2,000,000 per occurrence Property Damage, or \$2,000,000 per occurrence Personal Injury and Property Damage combined single limit and Blanket Contractual Liability- \$5,000,000 per person, \$5,000,000 per occurrence Personal Injury, and \$5,000,000 per occurrence Property Damage, or \$5,000,000 per occurrence; and (iv) Automobile Liability (including owned, non-owned and hired vehicles)-\$1,000,000 per person, \$1,000,000 per occurrence Personal Injury and \$1,000,000 per occurrence Property Damage or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit.

(b) At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration of insurance maintained by Seller. Such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this Order.

**21. Disputes, Applicable Law, and Venue.** (a) In the event of any dispute arising in connection with this Order, a vice president or equivalent executive from each of the parties shall promptly attempt to resolve the dispute. If such representatives cannot resolve the dispute within seven (7) days after the initial allegation was first made in writing, then the dispute may be filed in the proper court for disposition in accordance with this section 21.

(b) Pending final resolution of any dispute or appeal hereunder, Seller shall proceed diligently with the performance of this Order if requested by the Buyer. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of this Order, then Seller shall continue performance as determined by the Buyer.

(c) If this Order is issued pursuant to a U.S. Government prime contract, this Order including these terms and conditions shall be construed and applied in accordance with the Federal common law of Government contracts. To the extent that the Federal common law of Government contracts is not dispositive or this Order is not issued pursuant to a U.S. Government contract, this Order shall be governed by and construed exclusively under the laws of the State of Ohio, excluding its choice of laws rules.

(d) The parties hereby submit to the exclusive jurisdiction and venue of the state and federal courts of competent jurisdiction in Cleveland, Ohio. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to any purchase and sale of Products under this Order. The above sets forth the sole and exclusive jurisdiction and venue in which any lawsuit involving this Order may be filed. Buyer and Seller shall not challenge such jurisdiction and venue on any basis and waive their respective rights to do so.



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(e) Notwithstanding anything herein to the contrary, no remedy specified in these Terms shall be deemed an exclusive remedy. Each party shall be entitled to each and every remedy available under law or in equity for any breach hereof in addition to any remedy specified herein for a particular breach.

22. **Precedence.** In the event of any conflict or other inconsistency among the provisions of this Order, such inconsistency shall be resolved by giving precedence in the following sequence: (i) any provisions on the face of the Order; (ii) any specifications, drawings or other documents incorporated by reference in such purchase order; (iii) any applicable terms of any long-term supply agreement applicable to this Order and any amendments thereto; and (iv) these Terms. For clarity, sequence item (i) has precedence over sequence item (ii), (ii) over (iii), and so on.

23. **Relationship of Parties.** The parties shall at all times be independent contractors. Nothing herein shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Seller is responsible for all obligations and reporting requirements covering social security, unemployment insurance, worker's compensation, income tax, and any other reports, payments or deductions required by local, state, or federal law or regulation in connection with its activities under this Order. Neither party is granted, expressly or impliedly, any right or authority to create any obligation or liability on behalf of or in the name of the other party.

24. **Survival.** Provisions of these Terms which by their nature should apply beyond the length of agreement between the parties shall remain in force after any termination or expiration thereof.

25. **Entire Agreement & Severability.** This Order, including any documents incorporated by reference, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether such were made orally or in writing. If any provisions of this Order are deemed void or unenforceable, all other provisions shall remain valid and enforceable. Selective enforcement or waiver of one or more provisions of this Order by Buyer shall in no way act as a waiver of any other provision herein.

26. **Compliance with Laws and Guidelines.** (a) Seller shall comply with all applicable federal, state, provincial and local laws and regulations, including, but not limited to, laws and regulations with respect to basic working conditions and human rights, slavery or human trafficking, the protection of the environment, the U.S. Occupational Safety and Health Act of 1970 (OSHA) or the Canadian Hazardous Products Act, as applicable to its activities conducted in connection with this Order. Seller hereby certifies that it is in compliance with all such laws and regulations in the production of the Products, and that the Products are compliant with all applicable laws and regulations. Furthermore, if the Products purchased herein are considered toxic or hazardous under any law or regulation, Seller shall provide a copy of the Material Safety Data Sheet (MSDS) or equivalent under non U.S. law with each shipment or as otherwise specified on this Order.

(b) Seller represents and warrants that it will act in a manner consistent with Buyer's Business Conduct Guidelines, a copy of which is available upon request. Seller will, at minimum, have or



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implement appropriate systems, tools, and other necessary processes to ensure that it and its employees are trained, aware of, and comply with all applicable laws, regulations and other legal requirements as well as the general ethical business practices, including those discussed in the Buyer's Business Conduct Guidelines.

**27. Counterfeit Products.** The Seller shall not provide any "**Counterfeit Products**" to Buyer. Counterfeit Products are any Product(s) or other separately identifiable item(s) (including but not limited to articles, components, assemblies, or other goods) comprising a Product that are misrepresented as being authentically produced in accordance with approved manufacturing procedures, systems, or other requisite criteria. Examples of Counterfeit Products may include, but are not limited to, items that: (i) are an unlawful or otherwise unauthorized copy or substitute of an original equipment manufacturer ("**OEM**") item; (ii) are produced from a source without the express written authority from the OEM or applicable design authority; (iii) contain unlawful or unauthorized substitute components that are not in accordance with OEM design; (iv) are used, refurbished, re-marked, repaired, or otherwise altered in any way and represented as being new; (v) have not passed all required OEM testing, verification, screening, and quality control, but are represented as having met such requirements; and (vi) are labeled or otherwise marked in such a way that would mislead a reasonable person into believing the item was a genuine OEM good when it is not. Seller shall immediately notify Buyer if it knows or has reason to believe that it has provided any Counterfeit Product to Buyer. Seller shall provide all traceability information of Products to Buyer upon reasonable request, including the names of applicable supplier(s), supplier contact information, and specific location(s) of manufacture of requested Product(s). Counterfeit Products are Defective Products.

**28. Conflict Minerals.** In accordance with the Conflict Minerals provision, Section 1502, of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Act**") concerning the sourcing of tin, tantalum, tungsten, or gold ("**Conflict Minerals**") from the Democratic Republic of the Congo and its adjoining countries, to the extent that Seller provides Buyer with Products or other direct materials containing any Conflict Minerals, Seller represents that it has, or hereby commits to establish, adequate supply chain processes to support reasonable inquiry into and reporting of the country of origin of any Conflict Minerals that may comprise any of the Products provided to Buyer. If requested, Seller will promptly provide information, representations, or other such requested items to Buyer that satisfy Buyer that Seller is meeting its Conflict Minerals inquiry and reporting obligations.

**29. Fair Labor Standards Act.** For all work to be performed hereunder in the United States, Seller shall, via invoice or other form satisfactory to Buyer or Buyer's customer or end customer, certify that Products or Services covered by the Order were produced in compliance with Sections 6, 7, and 12 of the Fair Labor Standards Act (29 U.S.C. 201-291), as amended, and the regulations and orders of the U.S. Department of Labor issued thereunder.

**30. Equal Opportunity and Affirmative Action.** (a) This Order incorporates by reference: (i) all provisions of 41 C.F.R. 60-1.4, as amended, pertaining to the equal opportunity clause in government contracts; (ii) all provisions of 41 C.F.R. 60-250, as amended, pertaining to affirmative action for disabled veterans of the Vietnam Era; and (iii) all provisions of 41 C.F.R. 60-741, as amended, pertaining to affirmative action for handicapped workers.





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(b) Seller certifies that it is in compliance with all applicable provisions of 41 C.F.R.60-1, including but not limited to: (i) developing and presently having in full force and effect a written affirmative action compliance program for each of its establishments as required by 41 C.F.R. 60-1.40, as amended; (ii) filing EEO-1 Reports as required by 41 C.F.R. 60-1.7, as amended; and (iii) neither maintaining segregated facilities nor permitting its employees to perform services at segregated facilities as prohibited by 41 C.F.R. 60-1.8, as amended.

(c) Seller shall have or adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion, national origin, disability or any other legally protected characteristic.

**31. Offset Credits and Foreign Subcontracts.** Buyer represents that its business base consists, in part, of international orders, and that it must, from time to time, enter into international offset agreements to secure such orders. To the extent that the Products ordered hereunder are components of Buyer's products/systems sold to a foreign nation or concern or are non-recurring activities, tooling, equipment, engineering, etc. associated with Buyer's products/systems sold to a foreign nation or concern, and in recognition that such sale results directly or indirectly in business opportunities, sales or revenue for the Seller, the Seller agrees to cooperate with Buyer in the fulfillment of any offset program obligations that Buyer may be required to accept as a condition of such foreign sale. Seller hereby commits to assume and discharge, a proportionate share of said offset obligation(s), either directly or through a mutually agreeable third party, by engaging in such activities as subcontracting, co-production, co-development, technology transfers, counter-trade, investments, joint ventures, etc. in Buyer's customer countries. Buyer expressly claims the right to all industrial benefits and other offset credits arising with respect to any Products ordered hereunder, including any related subcontracts issued by the Seller to sources in the foreign customer's country. The Seller agrees to provide all necessary information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

**32. Export Controls.** (a) The Goods and/or technical data provided under this Order may be subject to the provisions of the Export Administration Act of 1979 (50 U.S.C. 2401-2420) and the Export Administration Regulations (15 C.F.R. 768-799) promulgated thereunder; the Arms Export Control Act of 1976 (22 U.S.C. 2751-2779) and the International Traffic in Arms Regulations (22 C.F.R. 120-130) promulgated thereunder; the Regulations of the Office of Foreign Assets control of the US Treasury Department (31 C.F.R. 500-599) the Canadian Export and Import Permits Act (RS Chapter 17), and/or the US Foreign Corrupt Practices Act. These statutes and regulations impose restrictions on import, export (and re-export or transfer to third countries) of certain categories of, and that licenses from the U.S. Department of State and/or U.S. Department of Commerce and/or Canadian Department of Foreign Affairs and International Trade may be required before Buyer is permitted to provide technical data to Seller or before Seller is permitted to export Goods to Buyer, and that such licenses may impose restrictions on use of such Goods and/or technical data.

(b) Seller shall comply with all applicable laws and regulations and any requirements of Buyer with respect to the import, export and re-export of Goods and/or technical data. Prior to the first



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shipment of Goods to Buyer, and otherwise upon Buyer's request, Seller shall provide to Buyer, in a form satisfactory to Buyer, certification as to whether the Goods are subject to the International Traffic in Arms Regulations (22 C.F.R. 120-130) issued by the US State Department, together with a certification as to the applicable United States Munitions List category if such Goods are subject to the ITAR, or, if they are not so subject, a certification as to the applicable Export Control Classification Number (ECCN) of such Goods under the Export Administration Regulations of the US Department of Commerce. Seller shall, at its expense, obtain all necessary export licenses, approvals and authorizations required to export any Product. Prior to shipment of military Products to Buyer, Seller is to verify with Buyer's Purchasing Representative that a valid, as is applicable, import or export license is in effect. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage, cost, expense or liability including lost profits, attorney's fees and court costs, for any failure or alleged failure of Seller to comply with such laws and regulations and for any false statements or material omissions by Seller with respect thereto including without limitation as to the import classification or export classification of Goods under applicable regulations.

(c) Seller shall not export any technical data provided to it by Buyer without Buyer's prior written consent.

**33. Gratuities, Kickbacks, Political Contributions, Fees, or Commissions.** (a) Seller shall not offer or provide, or cause or otherwise direct anyone to offer or provide, gratuities of any kind to Buyer or its employees. Seller shall also not provide, offer, attempt to offer, solicit, or accept kickbacks. Seller shall have and follow procedures designed to prevent and detect possible violations. Seller shall report in writing and telephonically any violation to Buyer's senior management and shall cooperate fully with any government agency investigating a possible violation.

(b) Within Seven days of Buyer's request for such, Seller shall furnish information regarding any payment, offer or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. Sec. 130) with respect to any sale by the Buyer for which a license or approval from the Office of Defense Trade Controls, Department of State, is required or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. Sec. 2762).

**34. Notice to Employees of Union Dues.** Title 29 of the Code of Federal Regulations, part 470.2(a), paragraphs 1 through 4, are incorporated by reference herein and made a part hereof.

**35. U.S. Government Contracts.** If an Order is in support of a Prime Contract, additional U.S. Government and related provisions as identified in Buyer's Purchasing Supplement - U.S. Government Contracts ("**USG Terms**") shall apply and are hereby incorporated by reference as if fully set forth herein. If any USG Terms conflict with these Terms, USG Terms shall control to the extent permitted by law. A copy of the USG Terms is available upon request to Buyer. Please note that while Buyer has used its best efforts to include all applicable or potentially applicable United States Government contract clauses in the USG Terms, such clauses are mandatory under statutes or other regulations and shall be included herein by operation of law, regardless of whether Buyer has included such clauses into the Order.