



**TERMS AND CONDITIONS OF SALE**  
**Rev. 04/16/2020**

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 person or business entity which placed this Order with Seller and as identified as the purchasing entity on the Order.

**“Goods”** means the products and/or services described on an Order.

**“Order”** means any Seller quotation that references or incorporates these Terms that is accepted by Buyer or any purchase order or purchase agreement issued by Buyer to Seller for which Seller accepts.

**“Seller”** means the legal entity as specified in Seller’s quotation or acknowledgment. Seller 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; and any other Affiliate entity of Whitcraft LLC.

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

2. **Agreement and Applicable Terms.** By placing an Order with Seller, Buyer accepts these Terms as binding and as the only terms and conditions that apply to such Order. All Orders are expressly limited to these Terms and the terms of the applicable Seller quotation or Buyer Order (excluding any of Buyer’s preprinted terms or other boilerplate printed thereon). ALL ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS OF SALE, INCLUDING REFERENCE TO ANY OF BUYER’S PREPRINTED TERMS OR OTHER PURPORTED PURCHASING TERMS AND CONDITIONS (AS APPLICABLE), ARE HEREBY REJECTED AND SHALL NOT BE BINDING ON SELLER OR FORM PART OF AN ORDER. These Terms may not be modified unless an authorized Seller representative agrees to any changes in a signed writing.

3. **Non-Government Purpose.** All Goods delivered by Seller under an Order are commercial in nature and may not be used for any government purpose unless Buyer provides Seller with advance written notice thereof which includes any unique requirements, such as Federal Aviation Administration (“FAA”) or U.S. government specifications. Any such requirements shall not apply to any Order except as provided by a separate writing signed by Buyer and Seller.



4. **Delivery.** Delivery will be in accordance with Buyer's requested schedule wherever reasonably practicable. Seller may deliver in advance of scheduled deliveries whenever such is possible.

5. **Order Change or Cancellation.** Buyer may not cancel or modify an Order without Seller's written consent.

6. **Packaging and Marking.** Seller's pricing for Goods includes packaging and marking in accordance with Seller's standard practices. Any specific or special packaging or marking requested by Buyer and accepted by Seller may be billed as an additional charge to Buyer.

7. **Shipment and Delivery.** The method of shipment shall be at Seller's discretion and invoiced accordingly. Prices do not include shipping unless such is stated on an Order. Delivery shall be EX WORKS Seller's facility (Incoterms 2020). Title (if applicable) and risk of loss pass to Buyer upon delivery to the carrier at Seller's facility. Any shipment from Buyer to Seller shall be CIP Seller's facility (Incoterms 2020) with Buyer deemed seller for the purposes of the CIP definition; Buyer shall prepay such shipments and not be entitled to reimbursement by Seller.

8. **Final Inspection and Acceptance.** Final inspection and acceptance by Buyer shall be at Seller's facility. All such inspections shall be subject to Seller's policies regarding visitors, security, and confidentiality. If Buyer does not inspect at Seller's plant, Buyer may request that Seller provide certificates of conformance and final inspection and acceptance shall be deemed to occur upon delivery. Notwithstanding final inspection and acceptance or Seller's certificate of conformance, for any latent defects the parties discover and agree are due to Seller's fault or negligence, Seller shall investigate and correct such latent defects, subject to the limitations of liability provided for herein.

9. **Quality Assurance.** Seller shall adhere to standard commercial practices in providing Goods. However, if there are any unique requirements, such as FFA or U.S. Government specifications required, the parties must mutually agree on such and specify on the face of an Order.

10. **Prices.** Seller's prices for Goods are subject to change under certain circumstances and Seller may adjust its prices in accordance with this section 10.

(a) Prices may change without notice prior to Seller's acceptance of Buyer's Order.

(b) Prices may change Order acceptance if Buyer changes any requirements of the Order, including any changes to the statement of work, configuration, quality criteria, delivery date, production requirements, quantity, or delivery destination.

(c) Prices may change after Order acceptance if Buyer prohibits or otherwise directly or indirectly interferes with delivery in accordance with Seller's quoted lead time.

(d) Prices may be increased after Order acceptance for any tax Seller may be required to collect or pay upon the production or sale of Goods or associated specific use tooling covered hereby.



(e) Prices may change due to financial or credit conditions of either party.

(f) Prices may change after Order acceptance if Seller's costs for raw material, energy, wages, or other input costs increase after acceptance but before complete performance of an Order.

(g) Prices may change to reflect Seller's then-current prices at the time of shipment if the date of shipment is more than twelve (12) months after the date of original Order receipt.

**11. Taxes.** Seller's prices are exclusive of sales, use, occupational, value-added and other taxes and duties levied at any time by any Federal, state, municipal or other governmental authority including but not limited to the U.S., all of which will be invoiced in addition to the price and will be payable by the Buyer.

**12. Payments, Title, and Security Interests.** (a) All Orders shall be made in U.S. Dollars and paid for via Seller's specified payment method. For domestic sales within the U.S., Buyer shall remit payments to Seller within thirty (30) days of Seller's invoice date. For international sales outside of the U.S. and whenever specified in the price quote, Buyer shall remit payments to Seller on a cash in advance basis.

(b) Buyer shall make all payments for an Order without deductions of any kind. All accounts between Seller and Buyer shall be settled independently of the payment of the Order invoice. Buyer's payment shall not prejudice claims for shipment shortages or omissions, but such claims will be waived if not asserted in writing within ninety six (96) hours after Buyer's receipt of the applicable shipment.

(c) For any balance that remains unpaid after thirty (30) days, Buyer may charge interest on such at the rate of one and one-half percent (1.5%) per month. Any discounts for early payment become inapplicable and void if not made within the specified time for early payment.

(d) Notwithstanding section 7, title shall not pass to Buyer and Seller shall have a security interest in all Goods until Seller receives payment for such in full. Upon Seller request, Buyer shall sign all financing statements and other documents as required to protect Seller's security interest.

(e) Buyer shall own any physical tooling that Buyer has paid for in full by such tooling being stated and invoiced as a separate line item to Buyer. Seller shall own all other tooling used to fill an Order. Seller shall own all perishable tooling and replacement perishable tooling, unless otherwise agreed to in writing. Title and risk of loss of Buyer owned tooling shall pass to Buyer upon payment in full, even if such tooling remains in Seller's possession. Seller shall not be required to provide perishable tooling to Buyer, regardless of ownership.

**13. Default.** (a) In addition to any other rights either party may have by law or in equity regarding a material breach under an Order (including Buyer being in arrears by more than thirty (30) days of any payment due date to Seller), Seller may take any one or all of the following actions: (i) terminate, or suspend performance of, any affected Order by giving to Buyer a written notice of its



intention to do so whereupon Seller shall be relieved of any further obligations to Buyer; (ii) assess finance charges for all past due payments, up to the lesser of 18% per annum or the maximum amount allowed by applicable law, accrued on a daily basis, whereupon such finance charges shall become immediately due and payable by Buyer in addition to any past due payments; (iii) assess charges for all costs of collection including but not limited to attorneys' fees incurred in connection therewith; and/or (iv) impose revised payment terms, including but not limited to Cash on Delivery (C.O.D.), Cash in Advance (C.I.A.), collectively against all existing or future Orders which Buyer may have with Seller whereupon Seller shall be relieved from continuing performance until such revised payment terms have been acknowledged in writing or in practice by Buyer.

(b) If Seller terminates or suspends performance beyond ninety (90) days, Buyer shall reimburse Seller for its termination/suspension costs and expenses including any unrecovered amortization of tooling or deferred learning, plus a reasonable allowance for profit. Buyer shall also pay damages for unabsorbed overhead and unrealized profit for products terminated and not produced.

**14. Intellectual Property.** Buyer does not and shall not acquire any ownership of any rights in or any license under Seller's patents, inventions or other proprietary data regardless of when such patents, inventions or other proprietary data may be or have been issued, conceived, generated or produced. All rights in, to and under Seller's patents, inventions or other proprietary data are reserved by and to Seller, and the same shall not be reproduced, used, practiced, or disclosed by Buyer for any purpose whatsoever without Seller's written permission. For any Buyer owned Tooling, Buyer shall only acquire title to the physical tooling itself and all intellectual property related to the design, creation, or manufacture of such tooling shall at all times remain with Seller.

**15. Warranty.** (a) For a period of twelve (12) months from the date of delivery of Goods under an Order ("**Warranty Period**"), Seller warrants that all such Goods will conform substantially to all applicable specifications and drawings and will be free from liens or encumbrances on title that would prevent use or resale of the Goods. Seller makes no warranty with respect to material or specifications furnished by Buyer or on behalf of Buyer. Buyer shall be responsible for any defect in material or specifications furnished to Seller by Buyer or Buyer's suppliers, contractors, representatives or designees; for any defect in design, labeling, or manufacturing or material specifications furnished to Seller by Buyer or Buyer's suppliers, contractors, representatives or designees; or for any designs, specifications, materials or services furnished by providers designated by Buyer.

(b) Seller shall not be deemed in breach of this warranty and shall not be liable under the Order with respect to any item: (i) from which the manufacturer's identifying marks have been intentionally removed or defaced, (ii) that has been maintained or installed in equipment negligently or other than in strict conformance with applicable manuals or instructions, (iii) that has been installed in equipment subjected to misuse or performance contrary to the manufacturer's operating instructions, (iv) that has been damaged by ambient environmental conditions, overload conditions or any condition for which the good was not designed, (v) that has been shipped or otherwise transported improperly, or (vi) that has been altered, repaired or overhauled by anyone other than by Seller or that are covered by other manufacturers' warranties. ***The warranties in this section 15 are sole and exclusive in respect to the***



***order and condition of the goods, are limited to those provided herein to the exclusion of any and all other warranties, express or implied, including without limitation, any warranty against infringement or warranties of title, merchantability, or fitness for a particular purpose, and are given and accepted in lieu of any other warranties, express or implied.***

(c) Buyer shall notify Seller in writing of any alleged breach of warranty within the Warranty Period and shall include details of the alleged defect in sufficient detail to permit easy identification by Seller. Buyer's exclusive remedy for a valid breach of warranty claim shall be the repair or replacement of the nonconforming Good at Seller's discretion. Seller shall bear transportation costs and risk of loss for any nonconforming Goods provided that Buyer returns the Goods in accordance with Seller's instructions and Seller determines that such Goods are actually nonconforming. After the Warranty Period expires, Buyer waives all claims of any kind it has against Seller for Goods subject to such expired Warranty Period, and Seller shall have no further obligations or liability to Buyer for any claims brought after the Warranty Period.

(d) Oral or written statements of Seller regarding the subject matter of any quotation or purchase order, other than those of officers of Seller duly authorized in writing, shall not: (i) be considered part of these Terms or any of the terms and conditions of any quotation or of any contract between Buyer and Seller, (ii) be considered warranties, or (iii) be relied upon by Buyer, unless expressly contained in a quotation or purchase order which has been accepted by Seller. No representative of Seller, other than officers of Seller duly authorized in writing, has authority to vary these Terms or to bind Seller to a contract for the supply of the goods described in a quotation or purchase order which varies in any way from these Terms.

**16. Limitation of Liability.** (a) Seller's liability on a claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from a quotation issued by Seller or from the performance or breach by Seller of any accepted Order, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation inspection, repair, operation or use of any equipment covered by or furnished under any Order, including Orders resulting from quotations issued by Seller, shall in no case exceed the purchase price allocable to the Goods affected by such breach and shall terminate the earlier of ninety (90) days after first use or operation or one (1) year after shipment of the Goods by Seller. ***In no event shall Seller be liable for special, consequential, or incidental damages, including without limitation, loss of profit or revenue, loss of use of the Goods or any associated equipment, facilities or services, cost of capital, downtime costs, personal injury or claims of customers of Buyer for such damages, even if Buyer has advised Seller of the possibility thereof.***

(b) The rights and remedies of Buyer under an Order shall be determined exclusively under sections 13, 14, and 15 of these Terms.

**17. Buyer Furnished Items.** If Seller is required to perform work on property furnished or selected by Buyer or Buyer's designee ("**Buyer Materials**"), Seller shall only be responsible for the value added portion of such transactions. Seller shall not be responsible for any damage or wear and tear to Buyer Materials unless such is excessive and directly caused by Seller's sole negligence or intentional



misconduct. Seller shall have no liability for replacement of Buyer Materials. Buyer shall provide all Buyer Materials at a steady rate without causing breaks in production and in quantities sufficient to cover all scrap.

**18. Accident Notification.** Buyer shall provide Seller with prompt notification of any accident or similar event that may involve Goods delivered under an Order and shall allow Seller to participate in any investigations, hearings, or related activities to the extent such Goods are involved.

**19. Export Controls.** Products manufactured by Seller, as well as technical data related thereto, may be subject to export licensing controls under the U.S. Export Administration Regulations and/or the U.S. International Traffic in Arms Regulations, which require licensing for and/or prohibit export or diversion of the Seller's products to certain countries. Buyer is responsible for obtaining all such export approvals and notifying Seller what, if any, export licensing controls are applicable. Buyer will not assist or participate in any export of Goods or related technical data provided to Buyer by Seller without first obtaining the required export license and will not knowingly assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. If Seller agrees to obtain any export approvals, Buyer shall assist Seller, as necessary, in obtaining such approvals. Buyer shall indemnify and hold Seller harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of Buyer to comply with applicable export laws and regulations.

**20. Force Majeure.** Seller shall not be in default by reason of any delay or failure to perform under an Order if such failure or delay arises out of causes beyond the reasonable control, or without the fault or negligence of, Seller ("**Force Majeure Event**"). Force Majeure Events include but are not limited to acts of God, acts of Government, fires, floods, epidemics, quarantine, restrictions, strikes, unavailability of energy or raw material, subcontractor performance, lockout, freight embargoes, unusually severe weather, and inability to obtain any required export license or other governmental approval. The time for delivery under an Order shall be extended in accordance with the duration of the Force Majeure Event.

**21. Indemnification.** (a) Seller shall indemnify, protect, defend and hold Buyer harmless against any claims, actions, damages, liabilities, costs and expenditures, including attorneys' fees and costs, incurred by Buyer (collectively, "**Losses**") in connection with any third party claim, suit, action, or threat thereof (collectively, "**Claims**") alleging that (i) the processes used by Seller to manufacture the Goods directly infringe, misappropriate or otherwise violate any intellectual property right of a third party or (ii) Seller has materially breached any of its obligations or warranties in connection with an Order.

(b) Buyer will indemnify, protect, defend and hold Seller harmless against any Losses incurred by Seller in connection with any Claim alleging that (i) Seller's manufacture or sale of any Goods infringes, misappropriates or otherwise violates any intellectual property right of a third party, (ii) property damage, or personal injury in connection with a defect in design or material furnished by Buyer or its designee or Goods sold to Buyer or (iii) that Buyer has materially breached any of its obligations or warranties in connection with an Order.



(c) The indemnified party will inform the indemnifying party of any Claims promptly after receiving knowledge of the same. The indemnifying party will control the defense thereof, at its expense. The indemnified party will cooperate with the indemnifying party as reasonably required for the defense thereof. The indemnified party will also have the right to select its own counsel to participate in any such defense at its own expense.

22. **Governing Law.** This Order shall be governed and construed in accordance with the laws of the state in which Seller's plant is located, without reference to any applicable conflicts of law rules, and shall be subject to all applicable U.S. laws and regulations, including but not limited to laws and regulations relating to exports, and all administrative acts of the U.S. government pursuant to such laws and regulations.

23. **Interpretation.** All documents, data, or communications shall be in English. If periods of time are stated, days mean calendar days, including Saturday, Sunday, and holidays, in accordance with the Gregorian calendar.

24. **Disputes.** (a) The parties shall make good faith efforts to resolve any disputes between themselves before commencing any legal proceedings. For any dispute that cannot be promptly resolved, either party may send written notice to the other party demanding the disputed matter be resolved by appropriate senior management representatives with authority to settle the matter ("**Initial Notice**"). The party sending the initial notice shall (i) set forth in detail all of its claims or issues in dispute and (ii) designate its representative. The other party shall respond to the Initial Notice in writing within fourteen (14) days and shall include its designated senior management representative as well as adding any other issues or claims for resolution not identified in the Initial Notice ("**Responsive Notice**"). The representatives of each party shall promptly meet and attempt to resolve the dispute within sixty (60) days of the Initial Notice ("**Resolution Period**"). During the Resolution Period, each party shall have at minimum, the opportunity to present a limited adversarial statement not more than two (2) hours in duration that sets out its position to the designated senior management representative of the other party.

(b) All offers, promises, conduct, documents, statements, whether oral or written, made or delivered in the course of such resolution efforts shall be confidential settlement negotiations and shall be subject to the provisions of Federal Rule of Evidence 408 and similar state rules and shall be inadmissible and not discoverable for any purpose in subsequent litigation; provided, however, that evidence existing independently of such resolution efforts that would have otherwise been admissible or discoverable shall not be rendered inadmissible or nondiscoverable as the result of its presentation or use during the resolution efforts.

(c) If the parties' representatives cannot resolve the dispute within the Resolution Period, or within any agreed upon extension thereof, either party may resort to any legal proceeding as may be available to it. The parties shall however, discuss and consider use of alternative dispute resolution forms such as mediation or arbitration.



(d) Any actions, suits or legal proceedings of any nature arising out of or relating to this Order shall be initiated and maintained only in the Federal District Court for the District in which Seller's plant is located. If such court does not have jurisdiction, then the legal proceeding shall be brought in a state court located in the District in which such plant is located. The court shall have exclusive jurisdiction over the matter and parties submit and subject themselves irrevocably to the personal jurisdiction of such courts. Buyer and Seller shall not challenge such jurisdiction or venue on any basis and waive their respective rights to do so.

**25. Assignment.** This Order may not be transferred or assigned, whether by operation of law or otherwise, by either party without the prior written consent of the other party; provided, however, that Seller may transfer or assign Orders to an Affiliate or to any successor to substantially all of the business of Seller. Any assignment in violation of the foregoing shall be void and without effect. For purposes of these Terms, a merger, consolidation, business reorganization, or change of control (i.e., a change in ownership of more than 50 percent of an entity's stock or other ownership interest representing the right to vote) is considered an assignment. Normal subcontracting by Seller shall not constitute assignment within the meaning of this paragraph.

**26. Partial Invalidity or Waiver.** If any provisions of these Terms are or become void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one provision of these terms and conditions by Seller shall not act as waiver of any other provision. Seller's pursuit of any remedy shall not foreclose Seller from pursuing any other remedy available, in equity or at law.

**27. Precedence; Entire Agreement.** If there is a conflict between these Terms and any of the documents that form an Order, then the provision that controls and governs shall be determined by the following order of precedence, descending from highest to lowest authority: (1) these Terms; (2) Seller's quotation; and (3) Buyer's purchase order. Notwithstanding the foregoing, Buyer shall continue to be, and shall observe, any and all confidentiality agreements entered into with the Seller. The Order, including its attachments, constitutes the entire understanding and agreement between the parties and supersedes any prior oral or written agreements with respect to the subject matter hereof and is for the sole benefit of Buyer and Seller. The Order may not be modified except by a written instrument duly executed by authorized representatives from both parties.