

# **SCHWEIZER AIRCRAFT CORP.**

**SA 908 Rev. AY (9/2005)**

## **PURCHASE ORDER STANDARD TERMS & CONDITIONS**

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**Schweizer Aircraft Corp.**

**SA 908 Rev. AY (9/2005)**

**PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

**For Purchases of Goods and Service**

**ACCEPTANCE OF ORDER**

- A. Buyer shall not contract with persons or entities debarred, proposed for debarment, suspended, or ineligible for the award of contracts, by any agency of the United States Government. Seller's acceptance of this Order, performance in furtherance of this Order, or its acceptance of payment under this Order constitutes, a certification that the Seller is not debarred, proposed for debarment, suspended, or otherwise ineligible for the award of contracts, by any agency of the United States Government. Seller shall promptly notify Buyer if Seller is suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or if Seller is listed or is proposed to be listed by the U.S. Government in any "denial orders," "denied persons lists", or "entities listed", or is listed as a "blocked person," "specially designated national," or "specially designated terrorist" for U.S. export administration purposes
- B. This Order shall be accepted in writing by Seller within the time specified on the face of this Order or, if not so specified, within a reasonable time of Seller's receipt hereof. If Seller fails to deliver a written acceptance of this Order, Buyer, at Buyer's election, may treat any of the following as an unqualified acceptance by Seller of this Order and the terms and conditions hereof: shipment by Seller of any Goods (or lots thereof) ordered hereby, furnishing or commencing any Services called for hereunder (including preparation for manufacture), acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof.
- C. The terms and conditions of this Order shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each shipment received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of the Seller. Any terms and conditions countered-offered by Seller in its acceptance, acknowledgment, invoice, or in any other manner are hereby rejected. Seller expressly acknowledges that it accepts the terms and conditions of this Order regardless of Buyer's subsequent rejection of any counter-offer from Seller.
- D. If this Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of Seller's offer, then the issuance of this Order shall constitute an acceptance of such offer only with respect to the description of Goods or Services, quantity and price, and Buyer's acceptance is otherwise subject to the express condition that Seller assent to all terms of this Order and that this Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof.
- E. THIS IS TO INFORM SELLER THAT UNITED STATES GOVERNMENT (USG) FUNDS MAY BE USED TO FINANCE THIS PURCHASE ORDER, AND THAT, IF APPLICABLE, ACCEPTANCE OF THIS PURCHASE ORDER WILL CONSTITUTE ACKNOWLEDGEMENT OF SUCH NOTIFICATION OF USG FINANCING.

## **DEFINITIONS and RULES OF CONSTRUCTION**

As used throughout this Order, the following definitions apply unless otherwise specifically stated:

"Aircraft" means the helicopter on which Seller's Goods and Services are used.

"Buyer" means Schweizer Aircraft Corp., a corporation organized and existing under the laws of the State of Delaware, and having a principal place of business in Horseheads, New York, United States of America.

"Buyer-Furnished Property" ("BFP") means those materials, tooling, equipment, parts, plans, technical expertise, intellectual property, processes, Drawings, Specifications, Data (as defined in Section 32, infra) or any other items which Buyer provides to Seller to enable Seller to complete its obligations under this Order.

"CAA" means the Civil Aviation Authority.

"Contracting Officer" means any officer or civilian employee of the U.S. Government who is properly designated and duly authorized to enter into, administer, or make any determinations or findings with respect to the Prime Contract, including the authorized representative of the Contracting Officer acting within the limits of his/her authority.

"Customer-Furnished Property" ("CFP") means those materials, tooling, equipment, parts, plans, technical expertise, intellectual property, processes, Drawings, Specifications, Data (as defined in Section 32, infra) or any other items which Buyer's Customer provides directly or indirectly to Seller to enable Seller to complete its obligations under this Order. CFP and BFP shall collectively be known as "Property".

"Day" or "Days" means a calendar day(s).

"Delivered Duty Paid" means that term as defined in Incoterm 2000, which definition is incorporated herein by reference.

"Delivery Date" means date of delivery as specified in this Order.

"DFARS" means the Defense Federal Acquisition Regulation Supplement.

"Drawings" means technical drawings provided, or referenced by, Buyer in this Order.

"FAA" means the Federal Aviation Administration.

"FAR" means the Federal Acquisition Regulations.

"Goods" means goods, parts, supplies, or items including, without limitation, those part numbers, model numbers, and/or descriptions set forth on the face of this Order and any Services supplied with them, and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order. It shall also include Services not supplied with Goods as the context requires.

"Government" means the United States Government, unless otherwise indicated.

"Government-Furnished Property" or "GFP" means that property owned by the Government and provided by Buyer and designated as GFP under the line items that have a Prime U.S. Government contract number.

"Government Property" means all property to which the Government has title pursuant to FAR Part 45, including property acquired by Seller under Purchase Order line items designated with a Government Contract Number.

"JAA" means the Joint Aviation Authority.

"Need Date" means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.

"Non-Recurring Expense" means an expense Buyer agrees to pay which relates to matters ancillary to the actual production of Goods, such as, without limitation, design, engineering and tooling work.

"Prime Contract" shall mean the contract between Buyer and its Customer, if any, under which this Order is issued.

"Purchase Order" or "Order" means this contractual instrument, including written change notices, supplements, amendments, or other written modifications thereto.

"Seller" means the legal entity providing Goods and Services or otherwise performing work pursuant to this Order and, if the context requires, its employees, officers, agents (including, without limitation, carriers and riggers), sub-contractors, and others acting at its direction and control or under contract to it.

"Services" means any effort supplied by Seller incidental to the sale of Goods by Seller under this Order including, without limitation, installation, repair and maintenance Services. The term "Services" shall also include, without limitation, any effort specifically purchased under this Order (and all associated efforts), such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services. Services may also be included in the term Goods as the context requires.

"Specification(s)" means any and all requirements with which Goods or Services must comply including, without limitation, standards set forth in this Order but excluding Drawings.

"Supplier Quality System" means the current quality system applicable to a Supplier, which may require, without limitation, on site quality inspectors certified by Buyer.

In this Order the following rules of construction shall apply to the interpretation of the provisions herein:

- (a) Headings are for the purpose of convenient reference only and shall not be construed to limit or extend the language of the provisions to which such captions refer, and do not form part of the Order;
- (b) The singular includes the plural and vice-versa as the context requires;
- (c) A reference to one gender includes the other;
- (d) A reference to a person includes a body politic, body corporate or a partnership;
- (e) Where the last day of any period prescribed for the doing of an action falls on a day which is not a regular business day (e.g., a Saturday, Sunday or National Holiday), the action shall be done no later than the end of the next business day.
- (f) Where an action is to be taken within 24 hours and this would allow, or require, the action to be taken outside of the hours of 9:00 AM local time to 5:00 PM local time the action shall be taken before the end of the next regular business day.
- (g) A reference to an Article includes a reference to all provisions of that Article;
- (h) A reference to a "dollar", or "\$" means the United States dollar unless otherwise stated
- (i) The word "includes" in any form is not a word of limitation, but of example; and

- (j) A reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party makes a permitted novation of any part of the Order.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. Specifications:**

- (a) Seller shall comply with all Specifications and Drawings set forth in, or appended to, this Order and with all specifications wherever and however incorporated, including by reference or otherwise. In the event of a conflict in Specifications, Seller shall comply with the most stringent Specification.
- (b) The Specifications applicable to this Order are performance type Specifications, and Seller shall define in detail the work required and the method of performance within the overall scope of the Specifications. Seller's price for Goods shall include Seller's costs for the design of the Goods, unless the Order specifically allows for Non-Recurring Expenses.
- (c) Seller shall exercise due diligence to discover and bring to the attention of Buyer any ambiguities, discrepancies, inconsistencies or conflicts in or between any Specifications, Drawings, or other documents incorporated by reference herein.

### **2. Delivery:**

- (a) Time is of the essence in Seller's performance of an Order, and Seller shall deliver Goods by the Delivery Date. A failure by Schweizer to enforce a right with respect to Supplier's failure to complete an obligation on time will not result in a waiver of that right, as specified in this Article. In addition, failure by the Supplier to complete an obligation on time shall not exempt or in any way reduce the Supplier's obligation to perform all other obligations on time
- (b) Delivery shall be to the location directed by Buyer. Delivery by Seller, at Buyer's direction, to a third party warehouse shall not be considered delivery to Buyer for the purposes of this Order unless otherwise agreed to by the Parties.
- (c) Seller shall not, without first obtaining Buyer's written consent, deliver any Goods or Services to Buyer more than ten (10) days before the Delivery Date. If Seller tenders Goods for delivery to Buyer earlier than ten (10) days before the Delivery Date, Buyer may, in its absolute discretion, either: (i) refuse delivery and require re-delivery at Seller's expense on the Delivery Date; or (ii) retain such Goods and make payment in accordance with the original payment schedule in this Order regardless of the actual date of delivery.

### **3. Product Support, Technical Publications, and Source Data**

- (a) Seller, for a period of three years, shall, at no cost to Buyer, provide Buyer, upon request, product support for Goods, which shall include, without limitation: field service support, engineering support, repair/overhaul support, training, technical publications (including all updates), ILS support, technical data, source data (in accordance with formats identified by Buyer) recommended maintenance, test equipment, ground support equipment and spare/repared/replaced parts (collectively "Product Support") as needed to meet Seller's warranty obligations.

- (i) In Aircraft on Ground (“AOG”) situations, Seller shall respond within four (4) hours and have spare parts on site within twenty-four (24) hours.
- (b) Seller, after the expiration of the three year period in 3(a) above, shall maintain, at its own expense, until the longer of a period of twenty years from the date of the last Purchase Order placed by Buyer, or so long as world-wide there are in operation twenty five (25) of the model Aircraft on which Seller’s products are installed, the ability to provide Product Support for Goods. Maintaining the ability to provide Product Support shall include, without limitation, proactive measures such as, without limitation: tracking sub-component obsolescence, purchasing sub-components to be discontinued, maintaining tooling, maintaining a supply base, and re-engineering components or systems to address obsolescence.
- (c) Seller shall deliver to Buyer Goods returned by Buyer to Seller for non-warranty repairs, or overhaul and repair, within forty-five (45) days from Seller’s receipt of Goods.
- (d) Technical Publications:
  - (i) Seller, at its own expense, shall provide Buyer, and Buyer’s Customers, all required publications, in Seller’s normal commercial formats. These publications shall be updated as necessary.
  - (ii) Seller, at its own expense, shall provide Buyer source data in a suitable form for integration into Aircraft manuals (camera ready copies or magnetic tapes).

**4. Buyer-Furnished Property/Customer-Furnished Property**

- (a) Buyer shall deliver to Seller for use in connection with, and under the terms of, this Order, the Buyer-Furnished Property (“BFP”) and Customer-Furnished Property (“CFP”) described in the Specifications, or in any Schedule incorporated herein, together with any related data and information that Seller may request, and is reasonably required, for the intended use of the CFP/BFP (collectively “Property”).
- (b) The Delivery Dates for this Order are based upon the expectation that Property will be delivered to Seller at the times stated in the Schedule or if not stated, in sufficient time to enable Seller to meet the Delivery Dates. If the required Property is not delivered in sufficient time to enable Seller to meet the Delivery Dates, Seller may notify Buyer of the delay and shall be entitled to an extension of the Delivery Dates equal to the period of delay in receiving such Property. Such adjustment shall be Seller’s sole and exclusive remedy.
- (c) Title to any BFP shall at all times remain with Buyer. Title to any CFP shall at all times remain with Buyer’s Customer. Title to all tooling, test equipment and material identified as a separate line item under this Order, which is fabricated, or acquired, by Seller under this Order shall vest in Buyer as directed by Buyer. Seller shall not move Property from the place of delivery.
- (d) Property provided to Seller under this Order shall be used only for, and in the performance of, this Order unless otherwise directed by Buyer in writing. Within thirty (30) Days, Seller shall reimburse Buyer or Buyer’s Customer for any Property used by Seller in excess of the allowance, if any, set forth in the performance of this Order.
- (e) Upon completion or termination of this Order, any Property shall be disposed of in accordance with Buyer’s instructions. If the disposition results in proceeds, Buyer, in its sole discretion, shall direct the application of proceeds, including crediting them against the Order price. Should Buyer choose to abandon Property while it is at Seller’s

premises, Buyer shall have no further liability or obligation whatsoever with respect to any costs or expenses related to Seller's ultimate disposition of the property or restoration and/or rehabilitation of Seller's premises.

- (f) While Property is in Seller's possession, Seller shall: (i) segregate it and identify it respectively as BFP or CFP with a mark/label, (ii) prevent the commingling of BFP/CFP with other material of Seller's, or material of others' in the Seller's possession, except in accordance with applicable Buyer specifications or Buyer's written approval, (iii) pay all taxes, (iv) assume risk of loss or damage, and (v) provide written confirmation of the foregoing upon Buyer's request.
- (g) Upon Buyer's request, Seller shall: (i) file a copy of this Order and any applicable attachments or supplements with any cognizant governmental agencies and (ii) execute required documents, including, without limitation, Uniform Commercial Code financing statements, and take other action as Buyer deems appropriate in order to protect Buyer's and Buyer's Customers' rights in the Property.
- (h) When Buyer provides Property for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall Seller or its subcontractors alter the Property's physical or chemical properties except in accordance with applicable Specifications or with Buyer's written approval.
- (i) Seller shall not copy or duplicate any Property, special tooling or special test equipment for any purpose other than performance of this Order for Buyer, unless Buyer and/or Buyer's Customer has provided its prior written consent. Seller pledges that it shall not grant a security interest in, pledge a collateral interest in, or allow a lien or encumbrance to attach to, the Property.
- (j) Buyer shall have the right to access all pertinent books, records, and premises of Seller, in order to verify compliance with this Article.
- (k) ACCOUNTING. Seller shall provide an annual accounting and physical inventory to Buyer of all Property provided to Seller ("Accounting"). Seller shall deliver an Accounting to Buyer within forty-five (45) days after Buyer's request.

**5. Inspection, Acceptance & Rejection:**

- (a) Seller, at its own expense, shall provide and maintain: (i) an inspection system that complies with all Specifications stated in an Order or Buyer's Supplier Quality System; or (ii) in the absence of such Specifications, an inspection system that is acceptable to Buyer.
- (b) Seller shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and otherwise conform to all requirements of this Order.
- (c) Seller shall maintain complete inspection records, as required by Buyer's engineering and quality departments, for all Goods including, without limitation, the results of such inspections, and the disposition of non-conforming or rejected Goods. Inspection records shall be available to Buyer during performance of an Order and until the later of (i) four (4) years after final payment, (ii) final resolution of any dispute involving the Goods delivered hereunder, (iii) the latest time required by an Order or Buyer's engineering or quality departments, or (iv) the latest time required by applicable laws and regulations.

- (d) Buyer, the FAA, the governing airworthiness authority or other similar foreign certification agency, and Buyer's customer may inspect and test the material and workmanship of all Goods at all places and times including, when practicable, during the period of manufacture or provision of Services. If any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to any such party(ies) all reasonable facilities and assistance for the safe and convenient performance of the inspection or test
- (e) Buyer, on the least commercially practicable notice, may perform inspections of, without limitation, Goods, procedures, processes and documentation, as are reasonably necessary to verify compliance with this Article. Seller shall conduct such inspections in a manner that shall not unduly delay work under this Order.
- (f) Nonconforming Goods: Notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of, or (iv) delivery to a third party warehouse of, the Goods, acceptance shall not be deemed to occur until six (6) months following Buyer's receipt at Buyer's facility ("Inspection Period").
  - (i) During the Inspection Period, Buyer, in its absolute discretion, shall have the following rights with respect to any Goods that do not conform in any respect to this Order including, without limitation, conformance with all Drawings and Specifications:
    - (a) Reject such Goods,
    - (b) Accept such Goods with a price reduction for money damages incurred by Buyer, and the cost of repair or the diminution of value, or
    - (c) Accept any commercial unit(s) and reject the rest.
  - (ii) With respect to rejected Goods, Buyer may, in its absolute discretion, either: (i) hold them for Seller at Seller's expense and risk of loss, or (ii) return them to Seller for, at Buyer's option, full credit or refund; returns shall be at Seller's risk of loss and expense, transportation collect and declared at full value unless Seller advises otherwise.
  - (iii) The rejected Goods returned to Seller shall not be repaired and re-delivered by Seller except upon written instructions from Buyer. Rejected Goods, which are subsequently repaired, shall not be tendered again to Buyer for acceptance without written disclosure of prior rejection(s). If required by applicable procedures, rejected Goods that are not re-tendered shall be mutilated and/or destroyed in compliance with such procedures.
  - (iv) With respect to nonconforming Goods that are accepted, Buyer may, in its absolute discretion, elect to have the nonconforming Goods repaired at Seller's expense, or setoff against Seller an equitable reduction in price for any diminution in value. If Buyer elects to repair the nonconforming Goods, all terms and conditions of this Order, other than equitable price reductions, shall remain in full force and effect as to the Goods furnished by Seller.
- (g) Upon Buyer's notification of any nonconformity in Goods, Seller shall:
  - (i) within thirty (30) Days from Buyer's notice, a. fully investigate the nonconformity and its root causes, b. meet with Buyer to formulate a corrective action plan, and c. if requested by Buyer, deliver to Buyer a written report of its investigation and its conclusions as to the root causes, and

- (ii) within thirty (30) days after providing Buyer the results of Seller's investigation, implement the corrective action plan, including any corrective action recommended by the Buyer, and eliminate the root cause of the nonconformity.
- (h) Buyer may, at any time, direct Seller to deliver known nonconforming Goods, which Goods shall be corrected, prior to shipment, in accordance with Buyer's instructions. Buyer shall make an equitable price reduction for each commercial unit of the Goods delivered pending completion of the corrective action. Buyer's direction to Seller to deliver nonconforming Goods shall not be deemed a waiver of Buyer's rights under, or an "acceptance" of such Goods for the purpose of, this Article.
- (i) Title to Goods delivered to Buyer shall not vest in Buyer and shall remain with Seller until Buyer's acceptance after a receiving inspection at Buyer's facility, and expiration of the Inspection Period. Delivery by Seller, at Buyer's direction, to a warehouse shall not effect a transfer of title from Seller to Buyer.
- (j) Acceptance of Goods or Services shall not be final or binding on Buyer if latent defects, fraud, or gross mistakes amounting to fraud on the part of Seller or Seller's subcontractors exist.

**6. Warranties:**

- (a) Seller warrants to Buyer, and Buyer's successors, assigns, customers, and users of Goods sold by Buyer, for a period of thirty-six (36) months after acceptance of the Aircraft by Buyer's customer, that all Goods provided hereunder shall be:
  - (i) merchantable and fit for the purpose intended;
  - (ii) new;
  - (iii) free from defects in material and workmanship;
  - (iv) with regard to Goods designed by Seller, free from defects in design;
  - (v) in compliance with all applicable Specifications, Drawings, and performance requirements;
  - (vi) free from liens or encumbrances on title; and
  - (vii) if the Goods are, or contain, hardware, software and firmware products, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing all times and dates), and are free of viruses and other sources of network corruption, and if the Order requires specific products to perform as a system, the foregoing warranty shall apply to those products as a system (collectively for this Article "Warranty")
- (i) The Warranty shall never extend beyond forty-eight (48) months after Buyer's receipt of the Goods. Delivery, inspection, test, use of, or payment for, Goods shall not effect Seller's Warranty obligation.
- (ii) Buyer shall notify Seller in a commercially reasonable time of a breach of Warranty ("Notice"), and may return ship the Goods on the fastest available commercial carrier and Seller shall bear the risk of loss and pay all freight costs.
- (iii) Buyer retains all its rights at law and in equity for Seller's breach of warranty including, without limitation: its right to bring an action for damages, revocation of its acceptance and return of Goods to Seller, and its right to cover. In addition to any other available remedies, Buyer, in its sole discretion, may require Seller to promptly repair, or replace, any Goods which breach the Warranty. Seller shall promptly reimburse Buyer for any

expenses or damages incurred by Buyer regardless of the nature of such expenses or damages as a result of, or relating to, Seller's breach of Warranty including, without limitation, incidental and consequential damages, and attorneys' fees and costs.

- (iv) If repairs are possible at Buyer's premises, Seller shall complete repairs within seventy-two (72) hours of Notice. If repair must be done off Buyer's premises, Seller shall complete repairs, and deliver the Goods as directed by Buyer, at Seller's expense, within seventy-two (72) hours of receipt of Notice. If replacement is required, Seller shall deliver, at its own expense, new replacement Goods within seventy-two (72) hours. If necessary to meet the seventy-two (72) hour delivery requirement, Seller, at no additional cost to Buyer, shall maintain, for as long as Goods are under Warranty, a pool of Goods ("Pool"). Title to, and risk of loss of, all Goods in the Pool shall remain with Seller until such time as Goods are accepted by Buyer.
- (v) Goods provided under Warranty, whether repaired or replaced, shall: be accompanied by notice stating whether the Goods are new replacements or repaired, and conform to the original Specifications and Drawings. Such Goods shall be covered by the Warranty for a period of six months or the balance of the original Warranty period whichever is longer.
- (vi) If Services or technical data are to be provided by Seller under this Order, Seller represents and warrants to Buyer that such Services or technical data are suitable for the purposes intended whether expressed or implied, and are in compliance with all applicable Specifications and performance requirements; and have been performed or prepared: (i) in a professional and workmanlike manner and according to best industry standards and practices; (ii) by personnel under Seller's direction and control, who are properly licensed, accredited, trained, and experienced, (iii) by personnel who are properly supervised and directed; and (iv) in compliance with Buyer's instructions or other Buyer requirements. Services or technical data rejected by Buyer shall be corrected and replaced in its entirety by Seller at Seller's expense even if the specified period for performance has elapsed.
- (vii) Seller warrants that the prices for the Goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar Goods in similar quantities, and if prices are offered to another customer in the future, which are lower than those offered herein, Seller shall offer those lower prices to Buyer.
- (viii) Seller acknowledges, warrants and represents that: (i) its Goods are being sold for possible use in rotor-wing or fixed wing aircraft, (ii) it is expert, fully competent in all phases of the work under this Order, (iii) Buyer has relied on Seller's expertise and (iv) Buyer is entitled to rely on Seller's expertise.

## **7. Indemnification:**

- (a) Seller covenants and agrees to defend, indemnify, protect, and hold Buyer, its officers, directors, employees and agents ("Indemnified Person") harmless from and against any liability, claim of liability, allegation, judgment, cost, expense (including reasonable attorneys fees and costs), cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property (including BFP or CFP in Seller's custody), resulting from or arising out of Seller's, or Seller's subcontractors', acts or omissions related to this Order, howsoever arising, including, without limitation, by reason of negligence; failure to comply with applicable Laws (as defined in Article 11); breach of any warranty, representation or certification; defect in design, material, workmanship or Service; or strict liability, unless caused by the sole negligence of the Indemnified Party. If Buyer brings an action for enforcement of this

indemnification provision, Buyer shall be entitled to an award of its reasonable attorneys' fees and costs if Buyer prevails in such proceeding.

- (b) If any claims, suits, actions or legal, civil, criminal, grand jury, regulatory, administrative or arbitral proceedings (collectively for the purposes of this subsection (b) "Claim(s)"), are brought against the Seller, which in any way may effect Buyer's interests, howsoever arising, Seller shall:
  - (i) Notify Buyer in a timely manner (not to exceed five (5) business days) after learning of any Claims, and shall not, at any time, consummate any settlement without Buyer's prior written consent;
  - (ii) Without releasing any obligation, liability or undertaking of Seller to indemnify Buyer hereunder, allow Buyer to:
    - (1) Cooperate in the defense of, or participate in proceedings related to, the Claim;
    - (2) With permission of the court (or other appropriate body), and without consent of the Seller, intervene in any action related to the Claim;
    - (3) Select its own counsel; and/or
    - (4) Supersede Seller in the defense of any such claim.

**8. Shipping Instructions:**

- (a) Shipments Originating and Terminating in the United States – All shipments which originate and terminate in the United States shall be FOB Buyer's designated destination (as defined by the Uniform Commercial Code); provided however, Buyer in its discretion may order Seller to deliver FOB Seller's place of shipment, in which case, Buyer shall pay for transportation and assume risk of loss during shipment.
- (b) Shipments Originating and/or Terminating Outside the United States – Unless otherwise specified in the Order, all shipments which incur a Duty shall be delivered "Delivery Duty Paid" (DDP), Buyer's designated destination. The term "DDP" and the rights and obligations of Buyer and Seller shall be as defined by Incoterm 2000, the ICC Official Rules for the Interpretation of Trade Terms.
- (c) Manner of Shipment – Seller shall ship in accordance with Buyer's routing instructions, including use of Buyer's preferred carriers. Unless otherwise provided on the face of the Order, Seller shall ship all quantities ordered in one shipment. If Seller elects to ship the quantities in more than one shipment, then Seller shall be responsible for all additional shipping costs. Buyer reserves the right to deduct any charges for additional shipping costs from amounts owed Seller under this or any other Order that Buyer has with Seller.
- (d) Seller, to the maximum extent practicable, shall employ packaging, containment, handling, and delivery methods and materials for Goods (collectively, "Packaging"), which:
  - (i) Ensure delivery to Buyer without damage or degradation, and comply with all Federal, State, and local laws and/or regulations;
  - (ii) Minimize the amount of non-recyclable Packaging including, without limitation,
    - i. using Kraft (brown) paper as packing filler; and
    - ii. not using Styrofoam popcorn or blown in Styrofoam.

provided however, Seller, may use such Packaging as is necessary for the protection of sensitive Goods including, without limitation, electronic equipment; and

- (iii) Maximize the use of reusable packaging, including palletized containers.
- (e) If Seller tenders Goods which do not comply with Buyer's packaging rules set forth in this Article, Buyer may, in its absolute discretion, either: (i) refuse delivery and require re-delivery at Seller's expense in compliance with the rules; or (ii) retain such Goods and charge Seller any commercially reasonable costs incurred as a result of Seller's failure.
- (f) Seller shall:
  - (i) Mark exterior containers with the following: (i) address, including receiving well number, (ii) purchase order number, (iii) part number, (iv) Prime Contract number, if any, and (v) any other special markings called for by this Order.
  - (ii) Include with each shipment of Goods a packing slip containing: (i) the purchase order number, (ii) the item nomenclature/description; (iii) the item part number; (iv) the item U.S. National Stock Number (where applicable); (v) the item serial number (where applicable), and (vi) the quantity of items. Each packing slip must be bar-coded and generated through the ESIS system or Buyer's Shipping System
  - (iii) Include with each shipment of Goods a bill of lading which references the number of this Order, has the correct "ship to" address, and references the receiving well number, if applicable. An original of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer's Transportation Department on request.
- (g) Any invoices accompanying a shipment to be imported shall meet the requirements imposed by the Customs Service of the recipient country.
- (h) If Seller will be importer of record for any items required to fulfill this Order, Seller shall be a certified member of the Customs-Trade Partnership Against Terrorism (C-TPAT) initiative. If Seller fails to maintain its C-TPAT certified member status, any delays or failure to perform based on Seller's inability to obtain imported goods due to US Customs requirements shall not be considered an excusable delay under Article 15.
- (i) Seller, if applicable, shall ship hazardous materials by a common carrier authorized to handle the material, and in accordance with the requirements of 49 CFR Parts 100-199, International Air Transport Association (IATA) Dangerous Goods Regulations, International Civil Aviation Organization (ICAO), and/or International Maritime Dangerous Goods Code, which include, without limitation, that:
  - (i) Shipping papers shall include an emergency contact number.
  - (ii) Shipping papers and packagings shall identify hazardous materials.
  - (iii) Packagings shall conform to applicable requirements. At Buyer's request, Seller shall provide test reports indicating Performance Oriented Packaging compliance to facilitate Buyer's reshipment of Seller's supplies. These requirements extend to each container within the primary shipping package
  - (iv) The Goods shall not be manufactured with ozone depleting substances, nor contain ozone depleting substances unless approved by Buyer in writing. If so approved the following warning statement shall apply to such items: "WARNING: Manufactured with CFC-11, 12, 13, 111, 112, 113, 114, 115, 211, 212, 213, 214, 215, 216, 217, Halons 12211, 1301, 2402, Carbon Tetrachloride or Methyl

Chloroform substances which harm public health and environment by destroying the ozone in the upper atmosphere.”

**9. Invoicing:**

- (a) Payment terms are net sixty (60) after verification of delivery of conforming Goods or Services.
- (b) All invoices shall be in English. Unless otherwise instructed by Buyer, invoices for Goods or Services shall include the following:
  - (i) Purchase order number;
  - (ii) Seller invoice number and date;
  - (iii) Payment terms;
  - (iv) Purchase price and supporting detail as required by purchase order;
  - (v) Packing slip number;
  - (vi) Shipping date;
  - (vii) Name of Seller;
  - (viii) Billing Name & Address;
  - (ix) “Ship To” address, receiving well number and point of contact;
  - (x) Delivery Terms (e.g., FOB, DDP);
  - (xi) Port of entry;
  - (xii) Complete description of the Goods, including name, part number, serial number, quantity, weights and measures and any other identifying markings.
  - (xiii) Country of origin in which the Goods were manufactured;
  - (xiv) If Goods procured under this Order are to be imported into the United States, Seller shall state on its invoice the value of any Assists (as described in Title 19 Code of Federal Regulations) such as articles or materials provided to Seller free of charge or at reduced cost by Buyer for Seller’s use to manufacture the Goods. To the extent any Assist is provided by Buyer, Seller shall declare on each invoice whether the goods were manufactured or serviced using dies, molds, patterns, engineering services, financial assistance, etc. which are provided at no or reduced cost by Buyer; and
  - (xv) Any additional charges or credits (such as commissions, discounts, insurance, freight, packing, containers, coverings, rebates, drawbacks, subsidies, royalties, license fees, and/or the proceeds of any subsequent resale, disposal or use of the imported goods that accrue directly or indirectly to Seller).

**10. Changes:**

- a. Buyer may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of this Order, including, without limitation, changes in whole, or in part, to any one or more of the following: (i) shipping or packing instructions, (ii) place of delivery, (iii) any Drawings, or Specifications, (iv) the statement of work, (v) the method or manner of performance of the work, and (vi) Property to be provided under this Order. Seller shall perform any changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications in the

ordinary course of dealing shall not be considered changes within the meaning of this clause.

- b. Buyer's engineering and technical personnel are not authorized to change the Goods or Services ordered or any Drawings, or Specifications of this Order. No change shall be binding on Buyer unless issued in writing by an authorized representative of Buyer's purchasing department.
- c. If any change under this Article causes an increase or decrease in the cost of or the time required for performance, which has not already been allocated to a Party under this Order, an equitable adjustment shall be made in the price and/or the delivery schedule, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's purchasing department not later than fifteen (15) calendar days after the date of receipt by Seller of the change order. No claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Order.
- d. If the cost of property or material made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property or material including the method for scrapping.
- e. Notwithstanding any pending claims for adjustment submitted by Seller, Seller shall proceed diligently with the performance of this Order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations to perform, including without limitation, the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.
- f. Changes to Goods
  - (i) Supplier shall not make any changes to Goods, including without limitation, in form, fit, function, or classification, or to any component or software, (collectively, "Engineering Changes") without: (i) submitting an Engineering Change Proposal which shall be delivered at the earliest practicable time and in all cases at least 90 days prior to the Delivery Date (ii) receiving from Buyer an acceptance of the Engineering Change; and (iii) submitting final Engineering Change data, which data shall be delivered at the earliest practicable time and in all cases at least 30 days prior to the Delivery Date.
  - (ii) SAC shall have absolute discretion in determining the classification of Goods. SAC may reject any Goods which fail to comply with applicable change procedures.

**11. Compliance With Laws:**

- (a) Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, including those relating to pollution control, waste disposal, hazardous substances, and protection of the environment ("Laws"). Further, Seller shall take all steps requested by Buyer which are reasonably necessary to allow Buyer to comply with all Laws.
- (b) Seller warrants and represents that any Goods which are manufactured in the United States have been, or will be, produced in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act (FLSA), as amended (29 U.S.C. §§ 201-219) and of regulations and orders of the United States Department of Labor issued

under section 14 thereof. The foregoing warranties and representations shall be considered Seller's written assurance contemplated by Section 12(a) and Section 15(a)(1) of the FLSA. Seller further warrants and represents that, insofar as applicable to this Order, any Goods which are manufactured in the United States have been, or will be, produced in compliance with all applicable requirements of and, the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), and any amendments thereto, as well as with the provisions of any other Laws with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted. The Seller also agrees to comply with the provisions of 29 CFR part 470.

(c) Export:

The Parties shall comply with the most current United States export control and sanctions laws, regulations, and orders applicable at the time of the export and re-export of Goods or Services including, without limitation, the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control (collectively, "Export Control Laws").

The Party conducting the export shall be responsible for obtaining the required authorizations. The Party conducting the re-export shall be responsible for obtaining the required authorizations. Each Party shall reasonably cooperate and exercise reasonable efforts to support the other Party in obtaining any necessary licenses or authorizations required to perform its obligations under this Order.

The Party providing any Goods or Services shall, upon request, notify the other Party of the applicable Export Control Classification Numbers ("ECCNs") as well as the ECCNs of any components or parts thereof (collectively "Components") if they are different from the ECCN of the Goods or Services at issue.

Each Party represents that (i) the Goods and Components it is providing are not "defense articles" as that term is defined in 22 C.F.R. § 120.6 of the ITAR and (ii) the Services it is providing under this Agreement are not "defense services" as that term is defined in 22 C.F.R. § 120.9 of the ITAR. The Parties acknowledge that this representation means that an official capable of binding the Party providing the Goods, Service or Components knows or has otherwise determined that the Goods, Services and Components, are not on the ITAR's Munitions List at 22 C.F.R. §121.1. Each Party shall reasonably cooperate with the other in providing, upon request of the other Party, documentation or other information that supports or confirms this representation.

To the extent that such Goods, Services or Components were specifically designed or modified for a military end use or end user, the Party providing such Items shall notify the other Party of this fact and shall also provide the other Party with written confirmation from the United States Department of State that such Items, and all such parts or components thereof, are not subject to the jurisdiction of the ITAR.

(d) Seller certifies to Buyer that it does not, and shall not, participate or comply with any boycott (both domestic and international) or boycott-related request or engage in any restrictive trade practices which are in contravention of a United States Government law or regulation including 15 CFR 760.

(e) Seller certifies that all required Qualified Parts List (QPL) parts have been manufactured by or procured from approved QPL sources.

**12. Aviation Unique Requirements**

- (a) Seller shall immediately notify Buyer upon receipt of any GIDEP Alert related to Goods. Seller shall provide Buyer a list of all affected Goods by Purchase Order, Part Number, Invoice Number, Serial Number, and any other identifying number as applicable. Seller shall immediately replace all affected Goods at its sole expense including any installation and removal costs for Seller's supplies so effected. Seller shall also reimburse Buyer for any damages and commercially reasonable expenses incurred by Buyer as a result of the GIDEP Alert which are caused by Seller. If Buyer receives a GIDEP Alert for Goods, Buyer shall immediately notify Seller and Seller shall proceed with its obligations as stated herein.
- (b) If the FAA issues Airworthiness Directives (ADs), or if the CAA or JAA issue the equivalent of Airworthiness Directives, related to Goods, Seller shall, at its sole expense, immediately remove the cause(s) of the ADs or AD equivalents in all Goods delivered and to be delivered to Buyer including but not limited to Goods utilized in the field. Seller shall also reimburse Buyer for any damages and commercially reasonable expenses incurred by Buyer as a result of such ADs or CAA and JAA equivalent of ADs which are caused by Seller.
- (c) Seller shall provide all Service Bulletins, Safety Bulletins and Administrative Directives (collectively in this subsection "Bulletins") to Buyer immediately upon issuance. Seller shall implement Seller's recommendations regarding Bulletins on all Goods delivered or to be delivered. Seller shall pay all costs and expenses of all corrective actions including, but not limited to, reimbursing Buyer for field service costs including, without limitation, removal and reinstallation costs.
- (d) If Goods are intended for use or installation on a commercial aircraft, Seller shall, without any cost to Buyer, obtain CAA or JAA certification of the Goods when requested by Buyer, and only deliver Goods that have been certified by the FAA. Seller at all times and at its sole expense shall maintain FAA certification of Goods delivered, and to be delivered. If it is necessary for Buyer to obtain CAA or JAA certification of commercial aircraft on which Goods will be installed, Seller shall, without any cost to Buyer, as required by Buyer from time to time, cooperate with Buyer to obtain such certification.
- (e) Seller shall comply with Buyer's Quality Manual in performing work pursuant to this Order.
- (f) Seller, at no cost to Buyer, shall cooperate and assist Buyer in accident reporting and investigation.

**13. Subcontracting:**

- (a) Seller shall not subcontract all or substantially all of the work required by this Order without first obtaining Buyer's prior written consent.
- (b) Unless otherwise specified, the place of performance of this Order shall be Seller's address as noted in the Order. The place of performance by Seller of this Order shall not be changed without first obtaining Seller's prior written consent.

**14. Insurance:**

- (a) Seller shall carry as a minimum the following insurance covering all Goods, Services and other work to be performed under this Order: General Liability Insurance in which the limit of liability for property damage, bodily injuries, including accidental death, shall be

\$1,000,000 for any one occurrence, and the limit of liability for the contractual obligations assumed hereunder shall be in sufficient amount (in Buyer's reasonable discretion) to cover the liabilities assumed herein by Seller.

- (b) All such insurance shall: be issued by companies authorized to do business under the laws of the applicable governmental authority for the place in which Seller is located; be in form satisfactory to Buyer; contain a provision prohibiting cancellation except upon at least ten (10) days prior notice to Buyer; and be primary in the event of a loss arising out of the Seller's supplying of Goods, performance of Services or other work. Certified copies of said policies or certificates evidencing such insurance, and naming Buyer as an additional insured, shall be provided to Buyer: upon request within 30 days after the date of this Order, and within a reasonable time after any renewals or changes to such policies are issued. Any failure of Buyer to request evidence of such coverage shall in no way reduce or effect Seller's obligation to name Buyer as an additional insured.

**15. Delays:**

Seller shall be liable for its failure to make, or delay in making, deliveries on the Delivery Date (collectively in this Article "Delay"). If a Delay occurs, Buyer shall have the right, at its option and without liability to Seller or the waiver of any of its other rights and remedies, to cancel this Order (in whole or part) by giving written notice to Seller. Provided however, a Delay may be excused and Seller is permitted to make a late delivery if: the Delay is due to a cause beyond the foreseeability and control of Seller; the Delay is not due to the fault or negligence of Seller; Seller promptly notifies Buyer in writing as soon as it appears that a Delay in making delivery might occur; and the Delay does not materially effect Buyer's scheduling on any system or process. Buyer shall be excused for any delays in its performance hereunder which are due to any cause beyond its control, including any delays caused by the acts or omissions of its customers.

**16. Buyer's Remedies for Default:**

- (a) Seller shall be in breach of this Order if it:
  - (i) Fails: a. to deliver the Goods or perform the Services by the Delivery Date, or any extension thereof granted by Buyer in writing or b. to comply with the Article entitled Premises and Computer Access; or
  - (ii) Fails: a. to perform any of its other obligations under this Order, or any other contract with Buyer, United Technologies Corporation or any of its affiliated companies, or b. to make progress so as to endanger performance of this Order in accordance with its terms, or c. to make prompt delivery to any other aircraft/aerospace manufacturer; and Seller does not cure, or where a cure is not immediately possible submit to Buyer a plan to cure such breach to Buyer's reasonable satisfaction, within a period of ten (10) days after receipt of notice from Buyer specifying such breach; or
  - (iii) Consents to the appointment of a receiver, trustee, liquidator, assignee, custodian, or sequestrator for, or similar official to control or administer, all, or a substantial part of, Seller's property; or admits in writing its inability to pay its debts generally as they come due; or makes a general assignment for the benefit of creditors; or makes any fraudulent conveyances; or defaults under any debt instrument it has issued or loan it has executed; or fails to abide by, or be in compliance with, any financial covenant, representation or warrant in any debt instrument it has issued or loan it has executed; or
  - (iv) Files: a voluntary petition in bankruptcy; or a voluntary petition or an answer seeking reorganization in any bankruptcy or insolvency case; or an answer admitting the material allegations of a petition filed against Seller in any such

case; or has entered against it, an order for relief in any such case; or for relief by voluntary petition, answer or consent, under the provisions of any other now existing, or future, bankruptcy or other similar law providing for the reorganization, or a winding-up of the corporation; or agrees or consents to, any agreement, composition, extension or adjustment with its creditors; or

(v) Has entered against it an order, judgment or decree in any proceeding by any court: appointing, without the consent of Seller, a receiver, trustee, liquidator, assignee, custodian, sequestrator for, or similar official to control or administer, all, or a substantial part of, Seller's property; or sequestering all or any substantial part of Seller's property; and any such order, judgment or decree of appointment or sequestration remains in force undismitted, unstayed or unvacated for a period of ten (10) days after the date of entry thereof; or

(vi) A petition against Seller in any bankruptcy or insolvency case in effect is filed and is not withdrawn or dismissed within ten (10) days thereafter.

(b) Upon Seller's breach, Buyer, may by written notice declare a default and, without waiving or limiting any other remedies Buyer may have under this Order, at law or in equity, may:

(i) Terminate this Order in whole, or in part, by written notice specifying the extent of termination and the effective date;

If this Order is entirely, or partially, terminated by Buyer under this Article, Buyer may:

procure, upon such terms and in such manner as Buyer, in its absolute discretion, shall deem appropriate, goods or services similar to those so terminated, and Seller shall be liable to Buyer for the difference between the price of the Goods or Services and the cost for such similar goods or services, provided however, that Seller shall continue the performance of this Order to the extent not terminated, and/or

require Seller to:

Transfer title and deliver to Buyer in the manner and to the extent directed by Buyer any Property, completed Goods and any partially completed Goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively "Contract Materials") as the Seller has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated; and/or

Protect and preserve property in the possession of Seller in which Buyer has an interest; or

(ii) With, or without, termination, bring an action for direct or indirect damages including without limitation, liquidated damages under any contracts with customers, damages for delays in providing Aircraft to Customers, incidental and consequential damages, lost profit, loss of use of Goods, attorneys' fees and court costs and expenses.

(c) Payment for: completed Goods accepted by Buyer; and the protection, and the preservation of property in which Buyer has an interest, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed Goods or Contract Materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding or threatened liens or claims including, without limitation, those that may be asserted by the IRS or any other taxing authority.

- (d) If, after notice of default under this Article, it is determined that Seller was not in default, or that an Excusable Delay (as defined infra) existed, Buyer shall have the option in its sole discretion to: reinstate the Order in its entirety or proceed as if a notice of termination had been issued pursuant to the Article entitled "Termination for Convenience."
- (i) Seller shall not be in breach of this Order if Seller's failure to perform:
- Arises out of causes beyond the control, and without the fault or negligence of, Seller, such as, without limitation, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
- Is caused by the default of a vendor or subcontractor to Seller, so long as such default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and the subcontracted goods or services were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule (collectively for this Article "Excusable Delay")
- Provided however, no cause shall constitute an Excusable Delay unless Seller has notified Buyer at the earliest practicable time of the existence of such cause followed by a confirmation in writing.
- (e) If Seller enters into bankruptcy proceedings, whether voluntary or involuntary, Seller shall furnish written notification of the bankruptcy to Buyer within five days of the initiation of bankruptcy proceedings. The notification shall include: the date the bankruptcy petition was filed, the court in which it filed, a listing of all outstanding Orders from, or other contracts with, Buyer, and a listing of all Property in Seller's possession.
- (f) If Seller is unable or unwilling to meet the Delivery Dates, or if this Order is terminated for default under this Article, Seller shall immediately deliver to Buyer, to the extent not previously delivered to Buyer:
- (i) all data (including manufacturing know-how) utilized by Seller in performing this Order;
- (ii) tools and test equipment necessary to manufacture and test the Goods; and
- (iii) without any further charge to Buyer, a worldwide non-exclusive royalty-free irrevocable license under any of Seller's patents, proprietary data, manufacturing know-how and data not covered by patents to the extent necessary to enable Buyer to make, or have made by others for it, use, sell and license the Goods.

**17. Termination for Convenience**

- (a) Buyer, by written notice specifying the extent of termination and the effective date thereof, may terminate this Order in whole or any part thereof, for its convenience in accordance with this Article.
- (b) After receipt of a notice of termination and except as otherwise directed by Buyer, Seller shall:
- (i) Stop work under the Order on the date and to the extent specified in the notice of termination;
- (ii) Place no further orders or suborders for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Order that are not terminated;

- (iii) Terminate all orders and suborders to the extent that they relate to the performance of any work terminated by the notice of termination;
  - (iv) Assign to Buyer, in the manner, and to the extent directed by Buyer all of the right, title and interest of Seller under the orders or subcontracts so terminated;
  - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of Buyer to the extent Buyer may require, which approval or ratification shall be final for all the purposes of this section;
  - (vi) Transfer title and deliver in the manner, to the extent, and at the times directed by Buyer: (1) the fabricated or unfabricated parts, work in process, completed work, supplies, Property and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination, and (2) the completed or partially completed plans, drawings, information, and other property which, if the Order had been completed, would be required to be furnished to Buyer;
  - (vii) Use its best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by Buyer, any property of the types referred to above; provided however, that Seller: (1) shall not be required to extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by Buyer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Seller under this Order or shall otherwise be credited to the price or cost of the work covered by this Order or paid in such other manner as Buyer may direct;
  - (viii) Complete performance of such part of the work as shall not have been terminated by the notice of termination; and
  - (ix) Take such action as may be necessary or as Buyer may direct for protection and preservation of the property related to this Order which is in the possession of Seller and in which Buyer or Buyer's customer has or may acquire an interest.
- (c) After receipt of a notice of termination, Seller shall submit to Buyer its termination claim promptly, but not later than three (3) months from the effective date of termination. Settlement proposals for Seller's termination claim must be on the forms prescribed by Buyer unless otherwise agreed to by Buyer and Seller. Settlement proposals shall be in the detail prescribed by such forms and shall be accompanied by full and complete supporting documentation as required by Buyer.
- (d) If Seller and Buyer fail to agree upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this Article, Buyer shall pay to Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed upon in accordance with this Article:
- (i) For completed Goods or Services accepted by Buyer (or sold or acquired as provided above) and not previously paid for, a sum equivalent to the aggregate price for such Goods or Services computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;
  - (ii) The cost of settling and paying claims arising out of the termination of work under Seller's subcontracts or orders as provided above, excluding the amounts paid or payable on account of supplies or materials delivered or Services furnished by Seller's subcontractors prior to the effective date of the Notice of Termination of work under this Order, which amount shall be included in the amount claimed under paragraph (i) above; and

- (iii) A fair and reasonable sum as profit on the above amount; provided, however, that if it appears that Seller would have sustained a loss on the entire Order had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.
- (e) The total sum to be paid to Seller shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the Order price of work not terminated. Except for normal spoilage, and except to the extent that Buyer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Seller the fair value as determined by Buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a purchaser.
- (f) Buyer may setoff and deduct from any payments due Seller under this Section 17, any credits due Buyer, or any other sums which may be due Buyer arising from this Order or any other relationship between the parties, including without limitation (i) all unliquidated advance payments or other payments made to Seller applicable to the terminated portion of this Order, (ii) any claim which Buyer may have against Seller, in connection with this Order or any other transaction with Seller, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by Seller or sold, and not otherwise recovered by or credited to Buyer. Buyer may also withhold and deduct sums for any contingent claims which may exist, or may be reasonably anticipated, for which Seller may be liable, which sums shall be released by Buyer, to Seller or Buyer as the case may be, immediately upon resolution of the contingency.
- (g) If the termination hereunder is partial, Seller may file with Buyer a claim for an equitable adjustment in the price or prices specified in the Order for the work in connection with the continued portion not terminated by the notice of termination, and an appropriate equitable adjustment under this section must be asserted within forty-five (45) days from the effective date of the termination notice.

**18. Stop-Work Order:**

- (a) Buyer, by written notice specifying the extent of termination and the effective date thereof, may order Seller to halt work under this Order in whole, or any part thereof, for a period not to exceed ninety (90) days after the stop-work order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of the stop-work order, Seller shall immediately comply with its terms and take all reasonable steps to mitigate costs allocable to the work covered by the Order.
- (b) If a stop-work order, or any extension thereof, expires, Seller shall not resume work without Buyer's written consent. Buyer shall make an equitable adjustment in the Delivery Dates and/or Order price in accordance with Article 10 - Changes of this Order, and this Order shall be modified, in writing, if:
  - (i) The stop-work order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Order; and
  - (ii) Seller submits a claim for the adjustment under Changes Article, provided however, that the request under this Article shall be made within thirty (30) days of a decision to either terminate or resume work.

**19. Duty to Proceed:**

Seller shall proceed diligently with the performance of this Order. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to this Order shall excuse the Seller from proceeding.

**20. Partial Invalidity/Unenforceability:**

If any provision of this Order shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.

**21. Survival:**

Seller agrees that the provisions related to: Warranty, Remedies for Breach of Warranty or Delivery, Indemnification, Inspection of Records, Intellectual Property Rights, Cumulative Remedies, Offset, Patent Infringement, Protection of Proprietary Information, and all provisions which relate to claims which may be made by Buyer under this Order shall survive and continue in full force and effect upon the termination of this Order. All representations, warranties and certifications given by Seller herein are continuing obligations, and Seller shall notify Buyer immediately if Seller is no longer in compliance with them. Buyer's notice of a failure to comply shall not affect Buyer's rights all of which are reserved.

**22. No Waiver:**

Buyer's failure under this Order to: seek a remedy for any breach by Seller, insist on performance of any term or condition, or exercise any right or privilege, shall not thereafter be deemed a waiver of those terms, conditions, rights or privileges, or others whether of the same, or similar, type.

**23. Attorney Fees:**

If Buyer brings a successful claim against Seller in any civil, administrative, arbitral or other tribunal, whether by way of complaint, counterclaim, cross-claim, inter-pleader or other procedural method, related to this Order (collectively "Proceeding"), Seller shall pay Buyer's attorney's fees, court costs and other reasonable expenses associated with such Proceedings.

**24. Applicable Law and Forum:**

- (a) This Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of New York, USA, without regard to conflicts of law principles. The exclusive forum for any claim, action or lawsuit arising from or relating to this Order shall be the state or federal courts of New York ("New York Court(s)"). The parties shall submit to the jurisdiction of the state and federal courts of New York with respect to any claim, action or lawsuit arising from or relating to this Agreement. Provided however, if Buyer determines enforcement of a judgment granted by a New York Court would not be given full faith and credit by a foreign jurisdiction in which Buyer seeks enforcement, it may bring the action in a forum capable of granting the desired remedy.
- (b) If Buyer and Seller mutually agree to participate in alternative dispute resolution, Seller agrees that all alternative dispute resolution proceedings shall take place in New York.
- (c) The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

**25. Cumulative Remedies:**

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

**26. News Releases:**

- (a) Seller shall not release any information relating to this Order, including, without limitation, news releases, articles, brochures, advertisements, or speeches, without the prior written permission of Buyer and will include acknowledgment of Government sponsorship where applicable. The Seller shall include this Article in any subcontract awarded as a result of this Order.
- (b) Seller, without first obtaining the written consent of Buyer, shall not: advertise, or publish, in any manner, this Order or any matter related to it, including without limitation, the fact that Seller has contracted to furnish Buyer the Goods or Services ordered by Buyer; or use any trademarks or trade names of Buyer in Seller's advertising, recruiting, or promotional materials,. If Seller breaches this subsection, Buyer may, in addition to other available remedies, terminate this Order, in whole or in part, under the Article - Remedies for Default.

**27. Interpretation and Order of Precedence:**

- (a) Any inconsistency or ambiguity in this Order shall be resolved by giving precedence in the following order:
  - 1. Purchase Order Face Sheets
  - 2. Terms and Conditions of this Order
  - 3. Any supplemental Terms and Conditions incorporated in this Order
  - 4. Statement of Work
  - 5. Drawings
  - 6. Specifications
  - 7. Operation Sheets
  - 8. Other documents mutually agreed to in writing and incorporated by reference herein.

**28. Toxic, Hazardous or Carcinogenic Substances and Sensitive Materials:**

- (a) Seller shall comply with all laws, regulations, ordinances and other rules and regulations related to toxic, hazardous and carcinogenic substances including, without limitation, the Hazard Communication Standard, 29 CFR 1910.1200, the Toxic Substance Control Act, (15 USC 2601 et. seq.), the Resource Conservation and Recovery Act (42 USC 6901 et. seq.) the Environmental Protection Agency Hazardous Waste Management Program (40 CFR 260 et. seq.) Section 313 of the Emergency Planning and Community Right to Know Act of 1986, 40 CFR Part 372 and related federal and state administrative regulations (collectively, "Environmental Act(s)"). Individual containers subject to Environmental Acts shall be shipped, marked, labeled, packaged, and preserved by Seller as required, including, without limitation: name and address of manufacturer, distributor, vendor or other responsible party; a description of hazardous materials; appropriate hazard warning and specific health (target organ) and/or physical warning per OSHA directives. Any information required by this provision shall be forwarded to: Manager, Environmental Health & Safety, Schweizer Aircraft Corp., 1250 Schweizer Road, Horseheads, NY 14845.
- (b) Seller, if required by the Environmental Acts, shall, upon delivery of any hazardous material called for hereunder, provide Buyer with a Material Safety Data Sheet ("MSDS") Seller shall ensure that the name of the items identified on the MSDS is identical to the

name that appears on the label of the product shipped to Buyer. Seller shall provide a copy of the Material Safety Data Sheet with each shipment to Buyer.

- (c) Seller, if required by the Environmental Acts, shall provide Buyer the following information with the initial shipment of each item to Buyer:
  - (i) A statement that the Goods contain chemicals which are subject to the Environmental Act(s).
  - (ii) The name and associated Chemical Abstract Service Registry number of each chemical which has been incorporated in the Goods and which is listed in the specific Toxic Chemical Listings contained in 40 CFR 372.45.
  - (iii) The percentage by weight of each toxic chemical component of the Goods shipped.
- (d) Asbestos: No asbestos Goods or Goods containing asbestos (collectively "Asbestos Goods") shall be delivered under this Order unless such is expressly permitted by the Drawings and Specifications. If Asbestos Goods are delivered as permitted herein, Seller shall: a) identify the Asbestos Goods; b) individually label each Asbestos Good; c) individually package each Asbestos Good in a non-porous sealed container or bag; and d) label each container or bag containing Asbestos Goods with the following permanent marking: "DANGER: CONTAINS ASBESTOS AND/OR ASBESTOS FIBERS. AVOID CREATING DUST. CANCER AND LUNG DISEASE HAZARD."
- (e) Electrostatic Discharge Control Requirements: Seller shall determine if Goods which are electrical and electronic parts, assemblies and equipment are electrostatic discharge sensitive ("ESD"). If so, Seller shall: (i) design, manufacture, test, and repair these ESD Goods using good commercial ESD control practices; (ii) handle and package ESD Goods to prevent ESD damage; and (iii) mark packages containing ESD Goods with an appropriate caution label.

**29. Report on non-U.S. Sources:**

Upon Buyer's request, the Seller shall (i) report all subcontract sources outside the United States utilized in the fulfillment of this Order, including the name and location of each such source, amounts paid and committed thereto and identification of the goods or services procured, and (ii) require its subcontractors, including those at all lower tiers, to maintain records of the above information.

**30. Industrial Cooperation/Offset:**

- (a) Buyer may use, or retain for future use, all or any part of the value of this Order for Offset purposes, including, without limitation, to fulfill Buyer's Offset or Industrial Cooperation obligations now existing or incurred in the future. Seller shall cooperate, in any manner reasonably requested by Buyer, including, without limitation, transferring, or assigning, to Buyer offset, or countertrade, credits earned by, or granted to, Seller or a third party as a result of any subcontracting by Seller for Goods and Services under this Order (collectively "Credits"), and to cooperate with, and furnish any certificates or other documents reasonably required by, Buyer in fulfillment of Buyer's Offset obligations. If as a result of Seller's subcontracting, Credits are in the name of a third party, or are anticipated to be earned by a third party, Seller shall take all necessary actions to ensure that the third parties are bound by this Article, perform in accordance with this Article and that the Credits are immediately transferred or assigned to Buyer.
- (b) Seller shall, upon Buyer's request, participate in Buyer's Industrial Cooperation, Offset, or other Industrial Benefit Programs. If Buyer issues such a request, Seller shall participate without any change or adjustment in the prices of the Goods and Services

ordered hereunder and at no additional cost or expense to Buyer. Seller's participation shall further be limited to the greater of the value of this Order or the cumulative value of all the Orders that Buyer has issued to Seller during the five (5) year period preceding this Order.

**31. Assignment and Setoff:**

- (a) Buyer may assign this Order or any interest hereunder, without recourse, upon written notice to the Seller.
- (b) Seller shall not assign its performance of this Order, in whole or in part, without the prior written authorization of Buyer. Any attempted, unauthorized assignment by Seller shall be null and void, and Seller shall remain liable to Buyer for full performance of this Order. If Seller breaches this Article, Buyer shall, in addition to other available remedies, have the right to terminate this Order, in whole or in part, under the Article - Remedies for Default.
- (c) Seller shall not assign its claims for money due, or to become due, from Buyer under this Order, unless the assignment is made to only one assignee and covers all amounts payable under this Order. Buyer shall not be obligated to pay an assignee until Buyer has received: written notice of the assignment from Seller, a certified copy of the instrument of assignment, a file stamped copy of the UCC-1 financing statement related to the assignment, evidence of Seller's authority to so assign, a consent from Seller to make the payment, and such other documentary evidence reasonably required by Buyer (collectively "Assignment Documentation"). If Buyer makes any payments to a third party after Buyer's receipt of Assignment Documentation such payments shall fulfill Buyer's requirements to make any such payments hereunder.

Seller may, in its reasonable discretion, refuse to pay an assignee, and instead commence an interpleader action related to any sums at issue under an alleged assignment. Buyer shall deduct from the sums due under this Order attorneys' fees, court costs and other reasonable expenses related to the interpleader action. Any provisions which Seller, or its assignee, seeks to enforce for interest, fees, penalties or other impositions on sums delayed in their payment because of an interpleader action shall be null and void.

- (d) All claims for money due or to become due from Buyer arising out of Seller's performance under this Order or any other transaction with Seller shall be subject to deduction or setoff by Buyer for actual or threatened breaches of this Order. Buyer's setoff under this Article shall not be deemed a breach of this Order and shall not relieve Seller of its obligations to continue to tender performance under the Article – Duty to Proceed.

**32. Intellectual Property Rights:**

- (a) Definitions: For the purposes of this Article 32, the following terms shall have the meanings indicated:
  - (i) "Close-Out" means completion of the Work (as defined below) by the Seller and acceptance of the Work by the Buyer pursuant to Article 5.
  - (ii) "Data" means recorded data and/or information, including without limitation, data and information of a scientific or technical nature such as: drawings; engineering reports; designs; specifications; test results; manufacturing, installation, assembly, operation, and/or maintenance documentation; and software (both object and source code), databases, database management systems, files, and

records, regardless of its form, the medium of recording, or the method of recording (e.g., written, printed, electronic, disk). Data as used herein also includes information presented in visual and/or audio formats such as graphics, video recordings, pictures, movies, and/or audio recordings in any form.

- (iii) "Invention" means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- (iv) "Seller" means, in addition to the definition provided in Paragraph (v) of the "Definitions", the individual employees, independent contractors, and other persons affiliated with the legal entity identified as the Seller who are involved in or associated with the Work.
- (v) "Seller Data" means Data created and/or developed by the Seller prior to or outside the scope of the Work; and Data in which the Seller has acquired an ownership interest by any other means, (e.g., assignment), that is related to Seller's performance in connection with the Work. Seller Data may include Data that is in the public domain or subject to restrictions regarding disclosure and/or use (i.e., Proprietary Information, and/or copyrighted Data).
- (vi) "Seller Invention" means any Invention(s) conceived or first actually reduced to practice by the Seller prior to, or outside the scope of, the Work, and any Invention in which the Seller has acquired an ownership interest by any other means, (e.g., assignment) that is related to Seller's performance requirements in connection with the Work. The terms Seller Data and Seller Invention shall collectively be referred to as "Seller IP".
- (vii) "Subject Data" means Data that is created and/or produced directly or indirectly by the Seller during performance under this Order ("indirectly" as used in this definition encompasses any subcontracting effort by any third party for, or on behalf of, Seller that results in the creation, and/or development, of Data necessary to fulfill all or any part of the Seller's performance requirements with respect to the Work). Subject Data also includes Data that is created or produced jointly by the Seller and Buyer in connection with the Work.
- (viii) "Subject Invention" means any Invention conceived, or first actually reduced to practice, directly or indirectly by the Seller during performance under this Order ("indirectly" as used in this definition encompasses any subcontracting effort by any third party for, or on behalf of, Seller that results in the creation, and/or first actual reduction to practice, of any Invention(s) necessary to fulfill all or any part of the Seller's performance requirements with respect to the Work). Subject Invention also includes any Invention conceived, or first actually reduced to practice jointly, by the Seller and Buyer during performance in connection with the Work. . The terms Subject Data and Subject Invention shall collectively be referred to as "Subject IP".
- (ix) "Third Party Data" means Data created, and/or developed, by any third party prior to, or outside the scope of, the Seller's performance requirements with respect to the Work, but which is related to, associated with, and/or necessary for use in conjunction with, the Work.
- (x) "Third Party Invention" means any Invention(s) created, and/or first actually reduced to practice, by any third party prior to, or outside the scope of, the Seller's performance requirements with respect to the Work, but which is related to, associated, with, and/or necessary for use in conjunction with, the Work required from Seller. The terms Third Party Data and Third Party Invention shall collectively be referred to as "Third Party IP"

- (xi) "UTC" means any subsidiary such as the Buyer and/or operating division of United Technologies Corporation, a Delaware corporation having its headquarters in Hartford, Connecticut.
  - (xii) "Work" means any Goods that the Seller is obligated to deliver to Buyer and/or any Services that the Seller is obligated to perform to fulfill the performance requirements of this Order, such performance requirements include, without limitation, Specifications, Drawings, and/or statement(s) of work. Work includes Seller IP, Subject IP and/or Third Party IP related to, associated with, and/or necessary for use in conjunction with, such Goods and/or Services.
- (b) The Buyer shall own all right, title, and interest, including any and all intellectual property rights, in any Subject IP. Seller shall reasonably assist Buyer as required to perfect Buyer's interest in its intellectual property rights in any such Subject IP, including, without limitation, assigning any and all right, title, and interest the Seller has in any Subject IP to the Buyer. Seller shall ensure that any third party, with whom Seller has subcontracted to perform Work related to Subject IP is obligated to, and does, assign any and all right, title, and interest such third party has in any Subject IP to the Buyer. The Buyer hereby authorizes the Seller to use any such Subject IP, but only to the extent necessary to fulfill its obligations under this Order, and for no other purpose whatsoever without the prior written consent of the Buyer.
- (c) No later than the Close-Out of this Order, the Seller shall report any Subject Invention(s), and deliver all Subject Data, to the Buyer. The format and quantity of such delivered Subject Data shall be as specified in this Order (or if the format and/or quantity are not specified in this Order, a single, complete copy of such Subject Data in the tangible format customarily used by the Seller in similar commercial transactions).
- (d) Seller shall notify Buyer in writing, in advance of commencing performance under this Order of its intent (to: (i) incorporate any Seller IP, any Third Party IP as any part of the Work; and/or (ii) base the Work in whole or in part upon any Seller IP, and/or any Third Party IP. With respect to any such Seller IP, and/or Third Party IP -
- (ii) If the Work involves any Subject IP having incorporated therein, and/or which is based upon, any Seller IP, and/or Third Party IP, the rights in any such Subject IP shall be as provided in Paragraph 32(b), and the Seller acknowledges its obligation under Paragraph 32(b) to reasonably assist Buyer in perfecting its intellectual property rights in any such Seller IP, and/or Third Party IP.
  - (iii) If the Work involves an existing item, component, system, or process that incorporates therein, and/or is based upon, in whole or in part, any Seller IP, and/or Third Party IP, the party (Seller and/or third party) owning such Invention(s) and/or Data shall retain its ownership interests therein. Seller hereby grants to Buyer, and Buyer's subsidiaries, an irrevocable, non-exclusive, world-wide, no-cost license and right to practice/use any such Seller IP in the conduct of its business, including the right to sublicense the practice/use of any such Seller Invention(s) and/or Seller Data to others in conducting its business. Seller shall acquire for the Buyer, and Buyer's subsidiaries, as required, an irrevocable, non-exclusive, world-wide, no-cost license and right to practice/use any such Third Party IP in the conduct of its business, including the right to sublicense the practice/use of any such Third Party Invention(s) and/or Third Party Data to others in connection with the Buyer's business.
- (e) Seller acknowledges that Work may constitute a subcontracting effort funded by one or more third parties (i.e., the Buyer has a prime contractor relationship with such third party/parties). Seller further acknowledges that in this circumstance the allocation of intellectual property rights with respect to any Subject IP under the Seller's

subcontracting effort for Buyer shall be governed solely by the terms and conditions of this Paragraph 32(e).

- (i) If the funding for the Seller's subcontracting effort is provided solely by the U.S. Government (through the Buyer), the Seller shall own all right, title, and interest in any Subject IP. Seller hereby grants:
  - (2) the U.S. Government an irrevocable, non-exclusive, nontransferable, royalty-free right and license to practice any such Subject Invention(s) for government purposes throughout the world by or on behalf of the U.S. Government;
  - (3) the U.S. Government "unlimited rights" in such Subject Data as defined in DFARS 252.227-7013(a)(15);
  - (4) the Buyer an irrevocable, non-exclusive, no-cost right and license to practice any such Subject Invention(s) throughout the world in the conduct of its business, such right and license including the right to sublicense other third parties to practice any such Subject Invention(s) in connection with the Buyer's business; and
  - (5) the Buyer an irrevocable, non-exclusive, no-cost right and license to use such Subject Data throughout the world in the conduct of its business, such right and license including the right to sublicense other third parties to use such Subject Data in connection with the Buyer's business (such right and license to "use" such Subject Data shall, at a minimum, include the rights defined in Paragraph 32(f)).
- (ii) If the funding for the Seller's subcontracting effort is partially funded by the U.S. Government (through the Buyer), the Seller shall own all right, title, and interest in any Subject IP. Seller hereby grants:
  - (1) the U.S. Government an irrevocable, non-exclusive, nontransferable, royalty-free right and license to practice any such Subject IP for government purposes throughout the world by or on behalf of the U.S. Government; and
  - (2) the Buyer an irrevocable, non-exclusive, no-cost right and license to practice any such Subject IP throughout the world in the conduct of its business, such right and license including the right to sublicense other third parties to practice any such Subject Invention(s) in connection with the Buyer's business.
- (f) Seller shall properly mark/legend all Seller Data, Par. 32(e)(i) Subject Data, and/or Third Party Data that Seller delivers or makes accessible to Buyer and/or the U.S. Government in connection with this Order ("Order Data") including any legend(s) required by the Federal Acquisition Regulations (FAR) and/or the Defense Federal Acquisition Regulations Supplement (DFARS), as applicable. Seller shall also define the ownership interests and any restrictions regarding disclosure and/or use with respect to Order Data. Buyer assumes no responsibility or liability with respect to any Order Data that is not appropriately marked/legended and/or which is incorrectly marked/legended.
- (g) EXCEPT AS EXPRESSLY AUTHORIZED IN THIS ORDER, NOTHING IN THIS ORDER SHALL BE CONSTRUED AS GRANTING SELLER A LICENSE IN OR ANY RIGHT TO USE ANY OF BUYER'S INTELLECTUAL PROPERTY ASSETS (INCLUDING, BUT NOT NECESSARILY LIMITED TO, INVENTIONS, PATENTS, COPYRIGHTS, TRADEMARKS, AND/OR TRADE SECRETS/PROPRIETARY INFORMATION) OTHER THAN IN THE PERFORMANCE OF THE WORK.

**33. Infringement Indemnity:**

- (a) For Goods or Services delivered hereunder, Seller shall be liable for, and indemnify and save Buyer, and each subsequent purchaser or user thereof, harmless from, any infringement claim, suit or action, including, without limitation, any proceeding under 28 U.S.C. § 1498, alleging that manufacture, use, or sale infringes any patent, trademark, copyright, mask work right or other right (collectively "Infringement Claim(s)"). If however, the Infringement Claim arises as a necessary consequence of Seller's compliance with Buyer's Drawings and Specification, which describe that aspect of the Goods or Services on which the Infringement Claim is based, Seller shall have no obligations to Buyer under this Article. In such event, Buyer shall save Seller harmless therefrom. This exception in favor of Seller shall not apply if the subject matter giving rise to the Infringement Claim either: (i) was derived from, or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions selected by Seller.
- (b) The party against whom an Infringement Claim is made shall promptly notify the other party in writing. The party required to indemnify under this Article shall promptly assume and diligently conduct the entire defense of such Infringement Claim at its own expense, provided that such party receives prompt written notice of the commencement of such Infringement Claim. Insofar as its interests are effected the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.
- (c) Notwithstanding any of the above provisions, Buyer may, at its own election, supersede Seller in the defense of any Infringement Claim and, thereafter, assume and conduct the defense according to Buyer's sole discretion. Upon Buyer's election, Seller shall be released from any obligation arising from such Infringement Claim under this Article. Such release is expressly conditioned on Seller's complete cooperation with Buyer in Buyer's defense of an Infringement Claim.

**34. Protection of Buyer's Proprietary Information:**

- (a) Definitions
  - (i) Request for Quotation and Requests for Information (collectively or individually hereinafter in this Article as an "RFQ") means any media used to communicate Buyer's Order requirements to Seller, and other prospective sellers, and to solicit quotations/ information.
  - (ii) As used in this Article, and in addition to the definitions above, "Buyer" shall also mean the legal entity, and any affiliate of Buyer, issuing an RFQ and "Seller" shall also mean the legal entity disclosing information pursuant to an RFQ.
  - (iii) "Proprietary Information" means Data (used hereinafter in this Article as defined in Article 32 above) that is disclosed between Buyer and Seller in connection with the subject matter of this Order or a RFQ, including without limitation: Drawings, Specifications, operation sheets, customer lists, material and process indices, software, tools, gauges, or goods, which is:
    - (1) not in the public domain; and
    - (2) not known to the receiving party prior to disclosure by the disclosing party; and
    - (3) not independently developed by the receiving party without use of Data disclosed by the disclosing party to the receiving party, and either

if the Data is in written, printed, or electronic form, marked with a restrictive legend indicating the proprietary nature of the information (e.g., PROPRIETARY), by the disclosing party; or

if the Data was identified as being proprietary by the disclosing party at the time of an oral or visual disclosure, described in a written summary by the disclosing party to the receiving party within thirty (30) days of Data disclosure; or

contained within Buyer's computer-based information systems and accessed by Seller in connection with the subject matter of this Order or an RFQ.

(iv) "Authorized Recipients" means:

- (1) Employees of the receiving party having a need to know the disclosing party's Proprietary Information in order to perform under or respond to this Order or a RFQ and having an obligation to protect Data and/or information of a proprietary nature;
- (2) Employees of independent contractors hired by Buyer in order to provide temporary technical services for Buyer (e.g., job shoppers) with a need to know Seller's Proprietary Information;
- (3) Buyer's consultants with a need to know Seller's Proprietary Information;
- (4) the Government, when mandated by applicable law or contract; and/or its officially recognized aviation certification authorities as necessary for product certification by Buyer and/or
- (5) those individuals and/or entities for which permissions were granted via a previously-executed, non-expired Non-Disclosure Agreement between the parties, provided that the Proprietary Information being disclosed hereunder falls within the scope and purpose defined in the prior agreement.

(b) If a proprietary information agreement exists between Buyer, Seller, and at least one other commercial party, which applies to the identical type of Goods or Services supplied under this Order, then Paragraphs (b) through (i) of this Article shall not apply to this Order.

(c) The receiving party shall:

- (i) limit disclosure of the disclosing party's Proprietary Information to the greatest extent possible;
- (ii) if disclosure of the disclosing party's Proprietary Information is necessary, disclose it only to Authorized Recipients; and
- (iii) if disclosure of the disclosing party's Proprietary Information is absolutely necessary to persons or parties who are not Authorized Recipients, not disclose the disclosing party's Proprietary Information until authorized in writing in advance by the Disclosing Party.

The receiving party shall protect and maintain the confidentiality of such Proprietary Information with the same protections, procedures and policies that the receiving party uses to protect and maintain the confidentiality of its own Data and/or information of a similar nature from unauthorized disclosure, or the reasonable standard of care used by similarly situated entities within the aerospace industry, whichever is higher.

- (d) For all Proprietary Information disclosed by Buyer to Seller in an encrypted format, Seller shall limit disclosure of all corresponding encryption and decryption keys, tools, and/or devices ("Encryption Tools") to Authorized Recipients, and shall not disclose Encryption Tools unless authorized in writing in advance by Buyer.
- (e) The receiving party shall maintain the restrictive legends marked on Data when disclosing the disclosing party's Proprietary Information under subsection (c), except that, with respect to disclosure to the Government, the Data shall be marked in accordance with applicable Government regulations.
- (f) The receiving party shall not be liable to the disclosing party for disclosure of Data that qualified as Proprietary Information at the time it was lawfully received but subsequently:
  - (i) entered into the public domain through no fault of the receiving party;
  - (ii) was lawfully disclosed to the receiving party by a third party without any obligation of confidentiality;
  - (iii) was inadvertently disclosed by the receiving party despite exercising the standard of care required under this Article to protect disclosure of Proprietary Information; or
  - (iv) was independently and lawfully developed by the receiving party without use of Proprietary Information of the disclosing party.
- (g) Upon completion of this Order or a RFQ, Seller shall deliver to Buyer, or destroy to Buyer's satisfaction, all media and embodiments of Buyer's Proprietary Information (including, but not limited to, printed and electronic copies, documents, software, tools, and goods which may be defective, partially completed, or completed), unless otherwise instructed by Buyer in writing.
- (h) Seller shall only use Buyer's Proprietary Information to perform this Order, other Orders for Buyer or prepare a RFQ, including without limitation, to design, manufacture, engineer, create, or repair Goods, Services, parts, or components; or drawings, specifications, or details, of them (collectively in this subsection "Hard Goods") Seller shall not use Buyer's Proprietary Information for any other purpose, including, without limitation, to design, manufacture, reverse engineer, create or repair identical or similar Goods, Services, parts, components, or drawings, specifications, details, or comparisons of them (collectively in this subsection "Comparable Hard Goods") , or obtain FAA Parts Manufacturer Approval or other government approval to manufacture Comparable Hard Goods, without Buyer's express written consent in advance. If Seller is producing Hard Goods for Buyer using Buyer's Proprietary Information and Seller is producing Comparable Hard Goods for another entity, Seller shall notify Buyer immediately in writing through Buyer's buyer. In addition, Seller shall not employ those persons working for, or at the direction of, Seller who are exposed to Buyer's Proprietary Information for Buyer's Hard Goods to manufacture Comparable Hard Goods without the prior written approval from Buyer. Buyer shall have a right to conduct such audits of Seller's records and premises as may reasonably be required to ensure Seller's compliance with this Article including a technical audit to ensure proper use of Buyer's Proprietary Information. Additionally, Seller shall execute, upon Buyer's request, all documents, affidavits, or other certifications as may be necessary to certify compliance with this Article.
- (i) Seller warrants and represents that no Proprietary Information will be wrongfully disclosed by Seller to Buyer in connection with this Order or a RFQ. Seller shall notify Buyer of all third-party Proprietary information disclosed by Seller to Buyer.

- (j) Seller shall protect and maintain the confidentiality of all third-party Proprietary Information disclosed by Buyer to Seller in the same manner Seller protects and maintains the confidentiality of Buyer's Proprietary Information in its possession as set forth in this Article. Seller shall defend, indemnify, protect, and hold harmless Buyer, its officers, directors, employees, and agents from and against any claim or liability, including attorneys fees, court costs and expenses, arising out of, or in any way related to, Seller's misuse or unauthorized modification, reproduction, release, performance, display or disclosure of any third-party Proprietary Information disclosed by Buyer to Seller.
- (k) Seller shall not sell or dispose of as scrap, or otherwise, any completed or partially completed or defective Goods manufactured using Buyer's Proprietary Information without mutilating said Goods in the manner prescribed by Buyer's pertinent parts mutilation standards, or in another manner approved in writing in advance by Buyer.

**35. Covenants Against Kickbacks:**

- (a) Definitions for this Article
  - (i) "Kickback", means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
  - (ii) "Person", means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
  - (iii) "Prime Contract", means a contract entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
  - (iv) "Prime Contractor Employee", means any officer, partner, employee, or agent of a prime contractor.
  - (v) "Subcontract", means a contract entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
  - (vi) "Subcontractor", means any person, other than the prime contractor, who offers to furnish, or furnishes, any supplies, materials, equipment or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract.
  - (vii) "Subcontractor Employee", means any officer, partner, employee, or agent of a subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the "Act"), prohibits any Person from:
  - (i) providing or attempting to provide or offering to provide any kickback;
  - (ii) soliciting, accepting or attempting to accept any kickback; or
  - (iii) including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher tier subcontractor.
- (c) Seller shall establish and follow reasonable procedures to prevent and detect possible violations of the Act in its operations and direct business relationships.

- (d) If Seller reasonably believes that a violation of the Act has occurred, Seller shall promptly report in writing the possible violation. Such reports shall be made to Buyer and to the inspector general of the government contracting agency responsible for the Prime Contract, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (e) Seller shall cooperate with any Federal agency investigating a possible violation of the Act.
- (f) Regardless of the subcontract tier at which a kickback was provided, accepted or charged under this Purchase Order in violation of the Act, Buyer may:
  - (i) offset the amount of the kickback against any monies owed by the Buyer under this Purchase Order; and/ or
  - (ii) direct that the Seller withhold from sums owed its subcontractor, the amount of the kickback. Buyer may order that monies withheld under this subparagraph be paid over to Buyer unless Buyer has already offset those monies under Subparagraph (d)(1) above. In the latter case, Seller shall notify Buyer when the monies are withheld.
- (g) Seller agrees to incorporate the substance of this Article in all subcontracts.
- (h) Seller represents and warrants to Buyer that Seller (including any of its officers, partners, employees or agents) and any Subcontractor below Seller or Subcontractor employee has not:
  - (i) provided or attempted to provide or offered to provide any kickback;
  - (ii) solicited, accepted, or attempted to accept any kickback; or
  - (iii) included, directly or indirectly, the amount of any kickback in the price applicable to this Order or in the subcontract price charged by any subcontractor to a higher tier subcontractor.
- (i) In addition, Seller represents, warrants, covenants and agrees that no commissions or other money or thing of value has been or will be paid, offered, given, or promised by Seller, its affiliates, or any Subcontractors (including any of their officers or employees) directly or indirectly to:
  - (i) United Technologies Corporation or any of its divisions or affiliates, which includes Schweizer Aircraft Corp. (in this Paragraph collectively referred to as UTC) or any directors, officers or employees of UTC; or
  - (ii) Any person, firm, or corporation, at the direction of or by arrangement with UTC, or any directors, officers or employees of UTC; or
  - (iii) Any political party or official thereof, and candidate for political office, or any officer, employee or agent of any government instrumentality of any government for the purposes of:
    - (1) Influencing any act or decision of such party, official thereof, candidate, officer, employee or agent in his or its official capacity, including a decision to fail to perform his or its official business; or
    - (2) Inducing any such party, official thereof, candidate, officer, employee or agent to use his or its influence with a government or instrumentality thereof to effect or influence any act or decision of such government or instrumentality.

- (j) In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's costs, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Act by the Seller (including any of its officers, partners, employees, or agents), or by any Subcontractor below Seller or Subcontractor employee.

**36. Ethical Practices**

- (a) Seller shall not recruit, or induce, Buyer's permanent employees whose area of direct responsibility are related to this Order to become employees of Seller during the term of this Order or for a period of six (6) months thereafter.
- (b) Neither Seller nor its agents or representatives shall offer or extend gratuities, such as gifts or entertainment to Buyer's employees, Buyer's customers, or customers' employees, regardless of the purpose or intent.

**37. Offshore Procurement**

Pursuant to 22 CFR 124.13 "Procurement by United States Persons in Foreign Countries (Offshore Procurement)", if unclassified technical data is exported to foreign persons for offshore procurement of defense articles under this Order then all of the following restrictions apply:

- (a) All technical data shall be used solely for the manufacture of the defense articles required under this Order.
- (b) Technical data shall not be disclosed to any third party except subcontractors within the country to which data is exported.
- (c) No foreign (non U.S.) person shall acquire any rights in the technical data.
- (d) Seller shall include all restrictions of this Article in all subsubcontracts with persons in the approved country for manufacture of Goods for delivery pursuant to this Order.
- (e) Seller warrants that upon completion of this Order, Seller and all subsubcontractors shall either destroy or return to Buyer all of the technical data exported pursuant to this Order.
- (f) Seller shall deliver any defense articles manufactured abroad only to Buyer or to an agency of the U.S. Government.

**38. Premises and Computer Access**

1. Seller shall comply with the provisions of this Article if the Goods to be provided, or Services to be performed, under the Order require access to any Buyer facility or Buyer system ("Seller Services") including, without limitation, constructive access through computer networks, access to required data in whatever media, and dedicated ISP hosted web-sites (collectively "Buyer Premises"). Access connections to Buyer's Premises shall comply with then applicable United Technologies Corporation policies for Supplier connectivity. If the Seller Services are for the United States government, or of a character which Buyer, in its absolute discretion, determines require them, the Enhanced Requirements set forth below shall apply. For all other Seller Services, the Minimum Requirements set forth below shall apply unless Buyer, in its absolute discretion, determines that the Enhanced Requirements shall apply to the particular job assignment or Seller Employee.

- a. Minimum Requirements

- i. Seller shall only provide, employees, agents, representatives, subcontractors, subcontractor employees or any other individual acting on Seller's behalf, or under its control (collectively "Seller Employee"), to perform Seller Services who:
  - 1. Are citizens, permanent resident aliens or have a visa or other documentation authorizing employment (of the type, and for the period, required under this Order) in the United States;
  - 2. Have not been convicted of any violation of law (including military law), which is a felony; and
  - 3. Comply with any other criteria Buyer, in its absolute discretion, shall establish for access to Buyer's Premises (collectively "Minimum Requirements").
- ii. Seller shall certify to Buyer in writing that all Seller Employees comply with the Minimum Requirements.

b. Enhanced Requirements

- i. Seller shall only provide Seller Employees to perform Seller Services who:
    - 1. Are a "US person" as such term is defined by 22 CFR 120.15,
    - 2. Provide ChoicePoint (a third party background investigation service) with a Release signed by the Seller Employee authorizing and allowing ChoicePoint to conduct a background investigation into such matters as ChoicePoint, in its absolute discretion, determines are required to verify compliance with this Article and Buyer's Security Rules whether set forth herein or elsewhere ("Buyer's Security Rules"),
    - 3. Receives a certificate of satisfactory completion of a background investigation from ChoicePoint,
    - 4. Have completed Buyer's security questionnaire to Buyer's satisfaction,
    - 5. Comply with any other lawful criteria Buyer, in its absolute discretion, shall establish for access to Buyer's Premises, and
    - 6. Have neither a conviction for any violation of law (including military law), nor charges pending adjudication for any violation of ordinance, regulation or law (including military law), which is a felony (collectively "Enhanced Requirements").
  - ii. Seller, or Seller's Employee as applicable, regardless of whether a Seller Employee is seeking a Schweizer Contractor Access Photo Badge and, in addition to any other documentation required in this Article or by Buyer's Security Rules, shall, at the time they present themselves at Buyer's Premises, provide:
    - 1. a certificate from ChoicePoint of satisfactory completion of a background investigation, or
    - 2. a current US government personal security clearance.
2. All Seller Employees seeking access to Buyer's Premises shall present proof of United States citizenship or permanent lawful residency status in the United States and governmental authorization to perform the services required of the Seller Employee under the Order (collectively "US Authorized Employee"), such proof may, depending on the services required under the Order, be: a United States passport, certificate of United States citizenship (N-560 or N-561), certificate of naturalization (N-550 or N-570), alien registration receipt card with photograph (I-151 or I-151), unexpired foreign passport with I-551 stamp, unexpired temporary resident card (I-688A), unexpired re-entry permit (I327), unexpired refugee travel document (I-571), certificate of birth abroad (FS-545 or DS-1350), report of birth abroad (FS-240) or original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States which bears an official seal. For Seller Employees who are not US Authorized Employees, Buyer's rules and regulations for foreign nationals shall apply.
3. Seller Employees shall:

- a. complete and submit to Buyer any and all administrative forms necessary on a premises by premises basis,
  - b. at all times while on Buyer's Premises possess and display a valid Schweizer access badge, and
  - c. register their vehicles with the applicable security office at Buyer's Premises and comply with all parking restrictions
4. In addition to any Buyer Security Rules applicable to a Seller Employee while on Buyer's Premises or Buyer's customer's premises, Seller Employees shall not: (i) conduct any personal or business activities unrelated to this Order, including without limitation, interviews, hirings, dismissals or personal solicitations; (ii) conduct Seller's personnel training, except for on-the-job training; (iii) attempt to participate in Buyer benefit plans or activities; (iv) send or receive mail or electronic message through Buyer's mail or computer systems unrelated to this Order; (v) sell, advertise or market any products or distribute printed, written or graphic materials; (vi) possess weapons of any kind; (vii) manufacture, sell, distribute, possess, use or be under the influence of controlled substances (for non-medical reasons) or alcoholic beverages; (viii) possess hazardous materials of any kind unless the Services provided under the this Order so require or Buyer otherwise authorizes them; (ix) leave authorized areas (limited to the work locations, cafeterias, rest rooms and, in the event of a medical emergency, the Buyer's medical facilities) without an escort as provided in Buyer's Security Rules.
5. Seller Employees while performing Seller's Services shall remain compliant with the provisions of this Article, throughout the term of this Order. A Seller Employee, and the Seller, shall inform Buyer's responsible Purchasing personnel ("Buyer's Buyer") immediately of any matter which could effect Seller Employee's continued compliance with the provisions of this Article. Buyer may thereafter order Seller to remove the personnel, require re-certification or further certification under this Article, or take such others actions as it, in its absolute discretion, deems appropriate.
6. If Seller Employees have access to information, information assets, supplies or other property, including property owned by third parties but provided to Seller personnel by Buyer (collectively "Buyer Assets"), Seller Employees shall: (i) not remove Buyer Assets from Buyer's Premises; (ii) only use Buyer Assets for purposes of this Order and reimburse Buyer for any unauthorized use; (iii) only connect with, interact with or use programs, tools or routines that Buyer agrees are needed to provide Seller's Services; (iv) not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers; and (v) if Buyer Assets are confidential, will not copy, disclose or leave such assets unsecured or unattended.
7. Buyer shall have the right, in its absolute discretion, to: (i) require each Seller Employee to complete a security questionnaire, (ii) audit the methodology, process and results used by Seller in conducting its background investigations, or otherwise to confirm that Seller and Seller Employees are complying with the provisions of this Article, (iii) deny access to Buyer's Premises to any Seller Employee at any time for any reason, and (iv) require a Seller Employee to comply with the provisions of this Article.
8. Seller Employees their persons, property, and vehicles entering or leaving any Buyer's Premises shall be subject to search; and both Seller, and Seller Employee, shall promptly notify Buyer of any accident or security incidents involving loss of, or misuse or damage to, Buyer's intellectual or physical assets; physical altercations; assaults; or harassment and provide Buyer with a copy of any accident or incident report related thereto.
9. Seller shall
  - a. Deliver to Buyer, and keep current, a complete list of the names and social security numbers of Seller Employees on Buyer's Premises,
  - b. Deliver to each Seller Employee prior to his/her arriving at Buyer's Premises the following notice on sexual harassment: "*Schweizer is committed to providing a work environment free from sexual harassment. Sexual harassment is unwelcome sexual conduct which has the purpose or effect of unreasonably interfering with an individuals work performance or which*

- creates an offensive or hostile work environment. If you believe that you have been the victim of sexual harassment while working on Schweizer facilities, you are encouraged to report such incidents directly to your employer and directly to Schweizer.”,*
- c. Maintain a signed acknowledgment that each person will comply with Buyer’s Security Rules including search guidelines,
  - d. Not assign a Seller Employee to perform services under this Order who is a former Buyer employee, or who has committed unethical or unlawful acts against a former employer, including without limitation, acts of industrial espionage, defalcation, misappropriation of Proprietary Information or any other theft offense or act of moral turpitude, whether criminal or civil and regardless of whether the act or omission was prosecuted criminally or civilly.
  - e. At Buyer’s request, at any time and for any reason or no reason at all, Seller shall remove a Seller Employee from Buyer’s Premises and not reassign such person to work on Buyer’s Premises.
  - f. Upon Buyer’s request, provide documentation to verify compliance with this Article.
10. If Seller desires to use a non-compliant Seller Employee, or otherwise desires to deviate from the provisions of this Article (e.g., for an Seller Employee whose denial for a reason provided in this Article would be a violation of applicable state Law) Seller shall submit a written request to Buyer’s Buyer for a waiver. The request shall set forth, as applicable, the criminal record, citizenship status, or other deviation of the effected Seller Employee, along with the reason the waiver is required. Buyer has absolute discretion in determining whether to grant a waiver, and its determination shall be final and non-reviewable
  11. Any expenses Seller incurs to comply with this Article, including without limitation, any costs for ChoicePoint background investigations and certificates, and any costs for re-certifications or further certifications, shall be borne by Seller
  12. To the fullest extent allowed by law, and notwithstanding any provision of this Order to the contrary, Seller shall defend, indemnify, and hold Buyer harmless from and against any and all costs, expenses, liabilities, fines, penalties, sanctions, or damages associated with Seller’s failure to comply with the provisions of this Article. Seller’s obligations shall survive the termination of this Order
  13. Seller acknowledges that failure to comply with the provisions of this Article may be a violation of federal or state law for which Seller and/or Seller’s Employee may face prosecution. Notwithstanding any provision of this Order to the contrary, a breach of any provision of this Article shall constitute a material breach of this Order and Buyer may exercise its rights set out in Buyer’s Remedies for Default. If Seller elects not to terminate the Order, Seller shall have an ongoing obligation to fulfill this Order and to substitute Seller Employees who comply with the provisions of this Article. Seller’s inability of to comply with the provisions of this Article shall not excuse the Seller from non-performance.
  14. Notwithstanding anything in this Article to the contrary, Buyer has absolute discretion, at will, for any lawful reason or no reason at all to: (i) deny any Seller, or Seller Employee access to Buyer’s Premises, (ii) to limit freedom of movement within Buyer’s Premises, (iii) limit the period of time access is allowed or (iv) make any other changes to Buyer’s Security Rules it deems appropriate.
  15. Computer/Information Technology Security Procedures.
    - a. If this Order requires that Seller have access to information owned, managed or protected by Buyer (whether belonging to Buyer or a third party and whether residing on Buyer’s own network or on a network of a Buyer participating site - by way of example, a third party Internet Service Provider, disaster recovery facility or remote data storage facility), including without limitation personally-identifiable information of Buyer employees, and other information protected by domestic or foreign privacy laws as then applicable, Seller shall at all times maintain effective security for information used, stored and created by Seller - in whatever media - in performing services under this Order (collectively “Buyer Information”).

- b. Seller, to secure and protect Buyer Information, shall install and maintain sufficient security procedures, including, without limitation, security hardware, software, firewalls, filters and other security tools, and implement procedures and policies (collectively "Computer Security Procedures"). Seller shall continuously update its Computer Security Procedures as required to maintain the level of security necessary to secure Buyer Information and comply with the provisions of this Article (Seller's Computer Security Procedures shall be sufficient under this section if they comply with the *Statement on Auditing Standards (SAS) No. 70, Service Organizations*, type II, issued by the American Institute of Certified Public Accountants).
- Seller shall:
- i. Deliver to Buyer, and keep current, its Computer Security Procedures and continuous improvement plans, including, without limitation, schedule for implementation of its continuous improvement plans.
  - ii. Store Buyer's Information in its possession in a dedicated secure environment owned and maintained by Seller. Seller may submit a written request in advance for a waiver of this provision to allow storage of Buyer Information in a shared environment. Buyer has absolute discretion in determining whether to grant a waiver, and its determination shall be final and non-reviewable.
  - iii. At commercially reasonable intervals not less than once pre year, permit Buyer, or its agent, to audit for compliance with this Article: at its facilities on one days notice, and by remote network at any time. The audits shall include any facilities with Buyer Information including, without limitation, remote sites and backup storage facilities. If Seller stores Buyer Information in a shared environment, Buyer may use a third party to conduct such audits.
  - iv. Segregate all Buyer Information into a separate database only accessible by Buyer and its agents and those employees of Seller for whom it is necessary to work with or maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer. Seller shall enforce its Computer Security Procedures to the utmost against unauthorized persons, including without limitation, Seller's own unauthorized employees from accessing Buyer Information.
  - v. Back up all Buyer Information and applicable software and have a reliable, effective and adequately tested disaster recovery plan, which shall be reasonably acceptable to Buyer.
  - vi. Avoid, to the greatest extent commercially reasonable, the transfer of Buyer Information across public networks, and encrypt any transfers. Encryption algorithms shall be of sufficient strength to equate to 128-bit RC-4 or better. All cryptography technologies used, must be published and approved by the general cryptographic community.
  - vii. In addition to any background investigations it must conduct on Seller Employees to comply with this Article, conduct appropriate background checks on all non-Buyer personnel and non-Seller Employees who will have access to Buyer's Information - regardless of the environment - to ensure those individuals comply with the Enhanced Requirements set forth in this Article, and other applicable provisions of this Article.
  - viii. At the time of signing this Order, provide to Buyer a termination plan stating: (i) the method for returning Buyer Information - including backup and archival information, (ii) time frames for completing the termination plan and the return of Buyer Information, and (iii) the method for permanently removing Buyer Information from Seller's networks, equipment and facilities including, without limitation, third party facilities wherein Buyer Information resides. The termination plan shall include a provision for supplying the data to Buyer in an industry recognized non-proprietary database and, if not, a license to use the proprietary data base software to access the data and audit compliance of the termination plan with this Article.
  - ix. At the time of signing of this Order, provide to Buyer the procedures and method Seller shall use to comply with Buyer's requirement: for high risk/ high sensitivity data applications, of two (2) factor authentication access, and for medium risk applications, of "Strong Password" data control.

- x. Provide information and cooperation to Buyer: a. in response to any governmental information request including, without limitation, a subpoena, an investigative request or other judicial, administrative or legislative inquiry seeking Buyer Information, b. to clarify and provide documentation relative to Buyer's Information including information in the possession of Seller. Seller shall promptly notify Buyer upon its receipt of a request requiring Seller to provide Buyer Information to a third party. and
- xi. Comply, within a commercially reasonable time, with Buyer Information security policies as amended from time to time
- c. Seller shall be in breach of its obligations under this Section 16 of this Article if:
  - i. its Computer Security Procedures fail to meet Buyer's then current standards, and
    - 1. it fails to; (a) provide Buyer with a remediation plan within thirty (30) days or, (b) if requested by Buyer, take certain applications off line until the inadequacies are resolved, or (c) remedy the inadequacies within the time frame specified by Buyer, or (d) remedy the inadequacies to Buyer's satisfaction, which determination shall be within Buyer's absolute discretion, or
    - ii. it fails to pass Buyer's compliance audits under this Article, or
    - iii. otherwise fails to comply with the provisions of this Article, which determination shall be within Buyer's absolute discretion

Notwithstanding any provision of this Order to the contrary, a breach of any provision of this Section 16 of this Article shall constitute a material breach of this Order and Buyer may exercise its rights set out in Buyer's Remedies for Default. If Seller elects not to terminate the Order, Seller shall have an ongoing obligation to fulfill this Order and to comply with the provisions of this Article. Seller's inability of to comply with the provisions of this Article shall not excuse the Seller from non-performance

16. Sellers shall provide the following notice to Seller Employees who perform Seller Services, *"You acknowledge, You are entering a manufacturing facility, and many activities undertaken here present inherent risks (including serious injury and death) that no amount of care can completely eliminate and those risks may increase during Your visit. You assume those risks and enter Our premises voluntarily. By Your voluntary entry, You, for Yourself and Your personal representatives, assigns, heirs and next of kin or any of them (collectively "You(r)") hereby Covenant Not to Sue Schweizer Aircraft Corp. and its parent United Technology Corporation and each of its officers, employees and agents (collectively "Us/Our/We") and Release and Discharge Us from, and Waive claims against Us for, all existing and future liability for death, injury to You or damage to Your property (collectively "Your Damage"), and any cause of action You may have for Your Damage, which results from Your visit to Our premises however Your Damage is caused. Further, You shall Indemnify and Defend Us, and Save and Hold Us Harmless from any liability, damage or cost We may incur ("Our Damage"): (1) due to Your presence, or any of Your actions, on Our premises and/or (2) due to Your performance of services on Our premises, whether for Us or others, however Our Damage is caused. You acknowledge that the foregoing Covenant, Discharge, Release, Waiver, Hold Harmless and Indemnity are intended to be as broad as permitted by New York law. You consent to whatever medical care might be provided on the premises and shall comply with all of Our rules and regulations applicable to facilities contractors who are under contract with Us.*

***YOU HAVE READ, UNDERSTOOD AND BY YOUR ENTRY VOLUNTARILY AGREE TO THE TERMS OF THIS NOTICE."***

**39. Equal Opportunity and Affirmative Action:**

Seller shall comply with the following sections of the Code of Federal Regulations: 48 C.F.R. §52.222-26 ("Equal Opportunity"); 48 C.F.R. §52.222-35 ("Affirmative Action for Special Disabled and Vietnam Era Veterans"); and 48 C.F.R. §52.222-36 ("Affirmative Action for Handicapped Workers"), as the same may be amended from time to time, to the extent that such sections are applicable to Seller's performance under this Order.

**40. Utilization of Small and Small-Disadvantaged Businesses:**

If Seller is incorporated in the United States, Seller shall exercise reasonable commercial efforts to contract and/or subcontract on behalf of Buyer using small disadvantaged, minority, and women-owned enterprises. The overall target (i.e., dollar value, percentage of purchases, etc.) for purchases made from disadvantaged, minority, and women-owned Sellers may be negotiated as part of this Order. Upon request, Seller will provide monthly reports to Buyer detailing small disadvantaged, minority, and women-owned enterprises contracted in support of Seller's obligations hereunder.

**41. UTC Master Terms Agreements**

Buyer and Seller acknowledge that this Order may, by mutual written agreement, be superseded or amended by the terms of any General Purchase Agreement or Master Terms Agreement entered into by United Technologies Corporation and Seller.

**42. Entire Agreement**

This Order constitutes the entire agreement between Buyer and Seller and supersedes all prior oral and written agreements, communications and negotiations between the Parties with respect to the subject matter hereof.

**43. Orders under U.S. Government Contracts**

If this Order is a subcontract under a Prime Contract awarded by the U.S. Government, the following additional provisions shall apply.

(a) CLAUSES INCORPORATED BY REFERENCE:

This contract incorporates the following Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, with the same force and effect as if they were given full text. The full text of these clauses is available on the internet at [www.arnet.gov/far](http://www.arnet.gov/far) and [www.acq.osd.mil/dp/dars/dfars.htm](http://www.acq.osd.mil/dp/dars/dfars.htm). All clauses apply to non-commercial items. Only those clauses marked with an asterisk (\*) apply to items determined by Buyer to be commercial under the definition of "commercial item" found in FAR 2.101; notwithstanding, the regulatory requirements to flow down a clause to a commercial item procurement shall in all instances take precedence.

<u>FAR Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
52.203-3	Gratuities	Apr-84
52.203-5	Covenant Against Contingent Fees	Apr-84
52.203-6	Restrictions on Subcontractor Sales to the Government	Jul-95
52.203-6	Restrictions on Subcontractor Sales to the Government -- Alternate I	Oct-95
52.203-7	Anti-Kickback Procedures	Jul-95
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	Jan-97
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	Jan-97
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	Apr-91
52.203-12	Limitation on Payments to Influence Certain <u>Federal Transactions</u>	Jun-2003
52.204-2	Security Requirements	Aug-96
52.209-1	Qualification Requirements	Feb-95
52.209-6	Protecting the Government's Interest When Subcontracting with contractors Debarred, Suspended, or Proposed for Debarment	Jul-95

<u>FAR Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
52.211-5	Material Requirements	Aug-00
52.211-15	Defense Priority and Allocation Requirements	Sep-90
52.215-2	Audits and Records - Negotiations	Jun-99
52.215-10	Price Reduction for Defective Cost or Pricing Data	Oct-97
52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications	Oct-97
52.215-12	Subcontractor Cost or Pricing Data	Oct-97
52.215-13	Subcontractor Cost or Pricing Data – Modifications	Oct-97
52.215-14	Integrity of Unit Prices	Oct-97
52.215-15	Pension Adjustments and Asset Reversions	Oct-04
52.215-16	Facilities Capital Cost of Money	Jun-03
52.215-17	Waiver of Facilities Capital Cost of Money	Oct-97
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Oct-97
52.215-19	Notification of Ownership Changes	Oct-97
52.215-20	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data	Oct-97
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications	Oct-97
* 52.219-8	Utilization of Small Business Concerns	May-04
52.219-9	Small Business Subcontracting Plan	Jan-02
52.222-1	Notice To The Government of Labor Disputes	Feb-97
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	Sep-00
52.222-20	Walsh-Healy Public Contracts Act	Dec-96
52.222-21	Prohibition of Segregated Facilities	Feb-99
* 52.222-26	Equal Opportunity	Apr-02
* 52.222-35	Equal Opportunity Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	Dec-01
* 52.222-36	Affirmative Action for Workers with Disabilities	Jun-98
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	Dec-01
52.223-3	Hazardous Material Identification and Material Safety Data	Jan-97
52.223-6	Drug-Free Workplace	May-01
52.223-7	Notice of Radioactive Materials	Jan-97
52.223-11	Ozone-Depleting Substances	May-01
52.223-14	Toxic Chemical Release Reporting	Aug-03
52.225-1	Buy American Act – Supplies	Jun-03
52.225-5	Trade Agreements	Oct-04
52.225-8	Duty-Free Entry	Feb-00
52.225-13	Restrictions on Certain Foreign Purchases	Dec-03
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun-00
52.227-1	Authorization and Consent	Jul-95
52.227-1	Authorization and Consent -- Alternate I	Apr-84
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	Aug-96
52.227-3	Patent Indemnity	Apr-84
52.227-9	Refund of Royalties	Apr-84
52.227-10	Filing of Patent Applications-Classified Subject Matter	Apr-84
52.227-11	Patent Rights – Retention by the Contractor (Short Form)	Jun-97

<u>FAR Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
52.227-12	Patent Rights – Retention by the Contractor (Long Form)	Jan-97
52.227-14	Rights in Data – General	Jun-87
52.228-5	Insurance – Work on a Government Installation	Jan-97
52.229-3	Federal, State, and Local Taxes	Apr-03
52.230-2	Cost Accounting Standards	Apr-98
52.230-3	Disclosure and Consistency of Cost Accounting Standards	Apr-98
52.230-6	Administration of Cost Accounting Standards	Nov-99
52.232-11	Extras	Apr-84
52.232-17	Interest	Jun-96
52.233-3	Protest After Award (In the event Buyer’s customer has directed Buyer to stop performance of the work under the prime contract under which this Order is issued pursuant to FAR 33.1, Buyer may, by written order to Seller, direct Seller to stop performance of the work under this Order. “30 days” means “20 days” in (b)(2); substitute “Buyer” for “Government” throughout the clause, except the first time “Government” appears in (f); in (f) add after “33.104(h)(1) the following: “and recovers those costs from “Buyer”)	
52.234-1	Industrial Resources Developed Under Defense Production Act Title III	Dec-94
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr-84
52.242-4	Certification of Final Indirect Costs	Jan-97
52.242-13	Bankruptcy	Jul-95
52.242-15	Stop-Work Order	Aug-89
52.243-6	Change Order Accounting	Apr-84
52.244-5	Competition in Subcontracting	Dec-96
* 52.244-6	Subcontracts for Commercial Items and Commercial Components	Jul-04
52.245-18	Special Test Equipment	Feb-93
52.247-63	Preference for U.S.-Flag Air Carriers	Jun-03
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels	Apr-03
52.248-1	Value Engineering	Feb-00

<u>DFARS Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Related Felonies	Mar-99
252.204-7000	Disclosure of Information	Dec-91
252.205-7000	Provision of Information to Cooperative Agreement Holders	Dec-91
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material	Dec-91
252.209-7000	Acquisitions From Defense Contractors Subject to On-Site Inspection Under the Intermediate Range Nuclear Forces (INF) Treaty	Nov-95
252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country	Mar-98
252.211-7000	Acquisition Streamlining	Dec-91
252.215-7002	Cost Estimating System Requirements	Oct-98
252.219-7004	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program)	Jun-97
252.223-7001	Hazardous Warning Label	Dec-91
252.223-7002	Safety Precautions for Ammunition and Explosives	May-94
252.223-7003	Change in Place of Performance – Ammunition and Explosives	Dec-91
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous	Apr-93

<u>DFARS Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
	Materials	
252.225-7001	Buy American Act and Balance of Payments Program	Mar-98
252.225-7002	Qualifying Country Sources as Subcontractors	Dec-91
252.225-7009	Duty-Free-Entry--Qualifying Country Supplies (End Products and Components)	Mar-98
252.225-7010	Duty-Free-Entry-Additional Provisions	Mar-98
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Related Felonies	Dec-04
252.204-7000	Disclosure of Information	Dec-91
252.205-7000	Provision of Information to Cooperative Agreement Holders	Dec-91
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material	Dec-91
252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country	Mar-98
252.211-7000	Acquisition Streamlining	Dec-91
252.215-7000	Pricing Adjustments	Dec-91
252.215-7002	Cost Estimating System Requirements	Oct-98
252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan	Apr-96
252.219-7004	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program)	Jun-97
252.223-7001	Hazardous Warning Label	Dec-91
252.223-7002	Safety Precautions for Ammunition and Explosives	May-94
252.223-7003	Change in Place of Performance – Ammunition and Explosives	Dec-91
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials	Apr-93
252.225-7001	Buy American Act and Balance of Payments Program	Apr-03
252.225-7002	Qualifying Country Sources as Subcontractors	Apr-03
252.225-7004	Reporting of Contract Performance Outside the United States	Apr-03
252.225-7012	Preference for Certain Domestic Commodities	Jun-04
* 252.225-7014	Preference For Domestic Specialty Metals	Apr-03
* 252.225-7014	Alternate 1	Apr-03
252.225-7016	Restriction on Acquisition of Foreign Manufactured Ball and Roller Bearings	May-04
252.225-7021	Trade Agreements	Jun-04
252.225-7022	Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber	Apr-03
252.225-7025	Restriction on Acquisition of Forgings	Apr-03
252.225-7031	Secondary Arab Boycott of Israel	Apr-03
252.225-7033	Waiver of United Kingdom Levies	Apr-03
252.225-7043	Anti-Terrorism Protection Policy for Defense Contractors Outside the United States	Jun-03
252.226-7001	Utilization of Indian Organizations, and Indian-Owned Economic Enterprises and Hawaiian Small Business Concerns	Sep-04
252.227-7013	Rights in Technical Data - Noncommercial Items	Nov-95
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial	Jun-95

<u>DFARS Reference</u>	<u>Title</u>	<u>Contract Clause Date</u>
	Computer Software Documentation	
252.227-7016	Rights in Bid or Proposal Information	Jun-95
252.227-7019	Validation of Asserted Restrictions - Computer Software	Jun-95
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends	Jun-95
252.227-7026	Deferred Delivery of Technical Data or Computer Software	Apr-88
252.227-7027	Deferred Ordering of Technical Data or Computer Software	Apr-88
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government	Jun-95
252.227-7030	Technical Data -- Withholding of Payment	Mar-03
252.227-7037	Validation of Restrictive Markings on Technical Data	Sep-99
252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	Dec-91
252.231-7000	Supplemental Cost Principles	Dec-91
252.234-7001	Earned Value Management System	Mar-98
252.235-7003	Frequency Authorization	Dec-91
252.235-7010	Acknowledgment of Support and Disclaimer	May-95
252.235-7011	Final Scientific or Technical Report	Sep-99
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services	Dec-91
252.242-7004	Material Management and Accounting System	Dec-00
* 252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	Mar-00
252.245-7001	Reports of Government Property	May-94
252.246-7000	Material Inspection and Receiving Report	Mar-03
* 252.247-7023	Transportation of Supplies by Sea	May-02
* 252.247-7024	Notification of Transportation of Supplies by Sea	Mar-00
252.248-7000	Preparation of Value Engineering Change Proposals	May-94
252.249-7000	Special Termination Costs	Dec-91
252.249-7002	Notification of Anticipated Contract Termination or Reduction	Dec-96
252.251-7000	Ordering from Government Supply Sources	Oct-02

Whenever necessary to make the context of the FAR and DFARS clauses applicable to this Order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer and/or Buyer's purchasing representative, except the terms "Government" and "Contracting Officer" do not change: (1) in the phrases, "Government Property", "Government-Furnished Property", and "Government-Owned Property", (2) in the patent clauses incorporated herein, (3) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his duly authorized representative, (4) when title to property is to be transferred directly to the Government, (5) when access to proprietary financial information or other proprietary data is required except as specifically otherwise provided herein, and (6) where specifically modified herein. If there is a conflict or addition to a clause in effect on the effective date of this Order and a clause of the Prime Contract, the Prime Contract clause shall govern. All references to the clause entitled "Disputes" and all references to the "Disputes Clause" in any other FAR clauses referenced herein are deleted.

- (b) Price Reduction for Defective Cost or Pricing Data: The following provisions shall apply to all Orders for which Seller is required to submit cost or pricing data pursuant to the Truth in Negotiations Act ("the Act"). For purposes of this Paragraph 44(b), a

"determination" by Buyer's customer means a final decision of a Government Contracting Officer and/or the formal assertion of a claim by a Non-Governmental Customer of Buyer and/or the withholding of money from Buyer by a customer based on an alleged failure of Seller or its subcontractors to comply with the Act and/or the agreement by Buyer to a reduction in any cost, price, or fee of its contract(s) as the result of an alleged failure to comply with the Act.

- (i) Seller shall reimburse Buyer for any loss or damage to Buyer in the event that Buyer's customer (including the Government) makes a determination pursuant to the clause(s) in, or required to be in, Buyer's prime contract related to the Act or its implementing regulations, that any cost, price or fee in Buyer's contract should or will be reduced because:
    - (1) Seller or a subcontractor or prospective subcontractor of Seller failed to furnish any cost or pricing data, including any requested data, that were required under the Act or its implementing regulations; or
    - (2) Seller or subcontractor of Seller furnished cost or pricing data that were not complete, accurate and current as certified, or as required to be certified, in the Seller's or its subcontractor's Certificate of Current Cost or Pricing Data.
  - (ii) At any time following such determination, the sums paid or payable to Seller under this Order may, at Buyer's sole option, be reduced in the amount by which the sums received or receivable by Buyer from its Customer (including, but not limited to, the allocable share of Buyer's indirect costs and profit or fee) are reduced based upon such determination, and this Order shall be modified in writing as may be necessary to reflect such reduction. At Buyer's election, Buyer may, pursuant to Paragraph 31 hereof, set off against any amounts due or to become due to Seller from Buyer, whether or not under this Order, all amounts by which this Order has been reduced as set forth above.
  - (iii) If an appealable decision is made by a Contracting Officer of the United States relating to cost or pricing data required to be submitted or actually submitted by Seller or a subcontractor of Seller, such decision (or portions thereof as relate to Seller) shall be conclusive upon Seller, unless Buyer, in its sole discretion, gives Seller the opportunity to appeal such decision in the name of Buyer. In the event Seller fails to do so, such decision shall be binding upon the Seller. Any such appeal brought by Seller in the name of Buyer shall be at the sole expense of Seller. Seller shall be solely responsible for the production of such appeal, including, but not limited to, the presentation of all pleadings, documents, evidence, facts, data and testimony in connection therewith. Further, Seller shall be responsible for providing any and all information requested by Buyer to verify, support, or provide any and all certifications required by the Contract Disputes Act of 1978, 41 U.S.C. Section 601 et seq., to perfect any such appeal. If Seller is given the opportunity to so appeal and elects to do so, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation and opportunity to participate in the appeal as Buyer may reasonably request. As used in this Subparagraph 44(b)(iii), the term "appeal" shall include any and all proceedings taken by Seller under this Subparagraph before a Board of Contract Appeals and any Federal Court. Seller shall be conclusively bound by any decision of any such Board of Contract Appeal or Federal Court.
- (c) Inspection of Books and Records
- (i) Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this Order, shall at all reasonable times

be subject to inspection and audit by any authorized representatives of any Department of the United States Government. Additionally, if this Order is a time and material or construction Order or provides for the payment of any amounts prior to the completion hereof, including, without limitation, progress payments, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this Order, shall at all reasonable times be subject to inspection and audit by any authorized representative of Buyer notwithstanding any other provision herein to the contrary.

- (ii) Seller hereby grants to Buyer the right to examine its books, records and data which will permit the adequate evaluation of cost and pricing data used to arrive at the price quoted (including without limitation claims/proposals submitted pursuant to the Changes clause and Termination for Convenience clause) to be able to properly negotiate the most favorable price and to verify compliance with the provisions of this Order.

(d) Orders Involving Government Property

- (i) Title to each item of Facilities, Special Test Equipment and Special Tooling acquired, fabricated or procured by Seller for Buyer under this Order shall pass to and vest in the Government or Buyer (depending on the line item under which it is acquired) when its use in performing this Order commences or when Buyer has paid for it, whichever is earlier, whether or not title previously vested in the Government or Buyer. Tooling is not subject to the provisions of this clause but is subject to the provisions of the Special Tooling Clause. The Government shall retain title to GFP.

- (ii) If this Order contains a provision directing Seller to purchase material from a vendor for which Buyer will reimburse Seller as a direct item of cost under this Order, title to material purchased from the vendor shall pass to and vest in the Government or Buyer upon the vendor's delivery of such material to Seller, and title to all other material shall pass to and vest in the Government or Buyer upon:

- (1) Issuance of the material for use in Order performance;
- (2) Commencement of processing of the material or its use in Order performance; or
- (3) Reimbursement of the cost of the material by Buyer, whichever occurs first.

- (iii) Seller shall establish and maintain a system acceptable to the Buyer and the Government and in compliance with FAR Part 45 and DFARS Part 245 to control, protect, preserve, repair and maintain Government Property. Government Property shall be used only for performing this Order, unless otherwise provided in this Order or approved by the Government.

- (e) Indemnification: In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by the Government and Buyer's Customer(s) as set forth in Paragraph 44(b) above, from any misinformation or misrepresentations provided by Seller in completing Supplier Annual Certifications and Representations, or from Seller's failure otherwise to comply with the clauses incorporated by reference in this Order.

- (f) Commercial Items: In the event that Seller asserts that Goods or Services meet the definition of "commercial items" under FAR 2.101, Seller shall provide relevant documentation to support Seller's assertion and a signed certification detailing the basis for Seller's assertion. Unless Seller provides such documentation and certification, or

Buyer waives the requirement in writing, all FAR and DFARS clauses listed above shall apply to this Order.

## SECTION II QUALITY ASSURANCE PROVISIONS

The following provisions apply to this Order if noted on the face sheet of the Order.

1. Two copies of Certificate of Compliance certifying that goods, items, and supplies meet all applicable specification and drawing requirements signed by a representative of Seller are required to be retained by Seller subject to audit and examination at all times by Buyer. If at any time Buyer requests a copy of a Certificate of Conformance for any particular shipment under this Purchase Order, Seller shall within three (3) working days of receipt of such request provide a certified copy of such form to Buyer. Seller shall retain the Certificate of Conformance and all supporting documentation pursuant to the record retention requirements in Clause 2 below. Additionally, all inspection records, including but not limited to test results, material certification, and supplier inspection checklists, representative of the Goods in accordance with contract requirements shall be all-inclusive and presented to Buyer upon presentation of the Goods for Buyer's inspection at Seller's facility.
2. Seller shall maintain supporting evidence for the period required by Buyer's Quality record retention requirement, as applicable. This documentary evidence shall be made available to Buyer for inspection upon Buyer's request.
3. Seller's Material Certificate showing chemical, physical and other requirements listed on the applicable specifications, signed by an authorized company representative, for Purchase Orders identifying SAC inspection at sellers facility shall have chemical, physical and other requirements listed on the applicable specifications on file at sellers facility and shall be made available to buyer for inspection upon buyers request. Purchase Orders identifying SAC inspection at buyer's facility must have certification and or test reports attached to the packing slip accompanying each shipment.
4. When Seller is manufacturing supplies for which Seller retains design responsibility, minor non-conformances can be processed by the Seller using Seller's documented Non-conforming Material Control System. However, Buyer always retains design responsibility for the design and interface requirements on all Specification and Source Control Drawings. Seller shall submit a Non-conforming Material Rejection Report in sufficient time prior to shipment for dispositioning any design specification or interface non-conformances. Further, Seller shall submit documentation to Buyer describing any major non-conformances which affect or involve critical parts, safety, performance, reliability, service life, weight or appearance (when applicable) relative to Seller's design responsibility drawings. Seller shall submit a Request for Waiver or Deviation (DD Form 1694 or letter format is acceptable) to the cognizant buyer in Buyer's Material Department, Purchasing Section, unless otherwise directed by the technical data specification cited in the Purchase Order prior to shipment to Buyer in sufficient time to enable Buyer's Program Management Team to determine what action should be taken with respect to the subject non-conforming material.
5. The requirements of SA908, Section II, Clause 06 as stated below are applicable.
  - 5a. **RESERVED**
  - 5b. A statement certifying that each shipment of material supplied under this Purchase Order has been inspected and is in full compliance with all applicable drawings and specifications shall be completed and retained on file at Sellers facility. Seller shall provide upon request of Buyer a statement certifying compliance with the Purchase Order requirements.

6. The goods, items and supplies purchased under this Order are subject to the requirements of AS9100. Seller shall flow down the applicable requirements of this Order to its lower tier suppliers. Any changes made to a lower tier supplier process, or operations by Seller or its lower tier supplier(s) after submittal of qualification samples or initial deliveries, shall be controlled with documented evidence that the changes have been independently verified to assure continued conformance to the requirements of this Order including but not limited to safety, performance, reliability, interchangeability, service life, weight or appearance (when appearance is applicable).
7. All Flight Safety Parts and or assembly(s) containing Flight Safety Parts are to be in strict accordance with Flight Safety Parts requirements of the Purchase Order contract herein.
8. All nonconforming material dispositioned in accordance with Buyer's Material Review Board procedures, which cannot be inspected upon receipt at the Buyer's facility, must be inspected and accepted by Seller, at the facility of the Seller prior to shipment to Buyer. Prior to shipment to Buyer, Seller shall notify Buyer in the event that Buyer wants to perform any inspection verification. If Buyer determines that source verification is required, Seller shall notify Buyer seven (7) working days in advance of the date on which the subject material will be ready for Buyer's inspection. All material in this category shall be properly identified and segregated from conforming material when shipped to Buyer.

#### **9-13 RESERVED**

14. In the event that Seller receives a Buyer Approved Source List for Special Processes and Laboratories dated subsequent to the edition shown on the face of this Purchase Order and that new edition affects the material to be delivered hereunder, Seller shall do the following:
  - a. In the event that affected material is in process, or the process is contracted for, or there is a cost impact on this Purchase Order, Seller shall promptly give written notice to the responsible Buyer, Purchasing Department, to that effect; or
  - b. Proceed in accordance with the new edition in the event that the conditions of Paragraph (a) above are not present.
  - c. Seller shall maintain an original Special Process Certification from approved sources listed on Buyer's Approved Source List for all Purchase Orders which identify that Buyer's inspection is to be conducted at Seller's facility. Seller shall present the Special Process Certification to Buyer during source inspection. Furthermore, Seller must maintain this original Special Process Certification at their facility and submit copies of this Special Process Certification upon request.

#### **15-19 RESERVED**

20. All parts requiring ATP delivered to Buyer must have a certificate which attests to the fact that the equipment has passed the acceptance tests and shall list the Part Number and the ATP Number and the applicable revision thereto maintained at the Sellers facility. Buyer reserves the right to witness testing of parts, and review of ATP results on file.

## **SECTION III SUPPLEMENTAL QUALITY ASSURANCE PROVISIONS**

### **FLIGHT SAFETY PARTS**

1. Flight Safety Parts

If this Order is for a part or an assembly which contains a Flight Safety Part, Seller shall accomplish the following:

- a. Seller shall at all times maintain a Buyer approved Quality System under this Order. In addition to any requirements identified in Section II above, Seller shall comply with the requirements of AS9100 as required by Buyer.
- b. Seller shall provide to Buyer for review and approval by Buyer, as requested, all operation sheets, planning and processing documentation, inspection processes and procedures, routing guides, quality assurance processes and procedures and parts traceability procedures (hereinafter collectively referred to as "Flight Safety Parts Documentation") relating to or arising out of Seller's proposed performance of "Critical Characteristics or Processes". Buyer will identify "Critical Characteristics or Processes".
- c. Seller shall, at no cost to Buyer, make such changes as may be required by Buyer to obtain and maintain approval of Seller's Flight Safety Parts Documentation.
- d. Upon approval of Flight Safety Parts Documentation including without limitation those operations identified as "Critical Characteristic" or "Critical Processes" by Buyer, Seller shall make no changes to its Flight Safety Parts Documentation including without limitation "Critical Characteristics or Critical Processes" or other aspects frozen by the Buyer in the "Flight Safety Parts Documentation", or use any alternate material, without the prior written approval of Buyer.
- e. For each part delivered by Seller and accepted by Buyer under this Purchase Order, Seller shall develop and maintain as part of its "Flight Safety Parts Documentation", verification of compliance with all the requirements of Seller's "Flight Safety Parts Documentation". This includes a system to identify and verify that each "Critical Characteristic" or "Critical Process" strictly complies with all the requirements set forth in "Flight Safety Parts Documentation" and in this Clause, and that the part was manufactured/processed in compliance with the "Flight Safety Parts Documentation".
- f. Seller shall maintain all Flight Safety Parts documentation developed and used under this Order for a period of forty (40) years after part manufacture. Buyer is granted the right from time to time to audit Seller's books and records for compliance with the requirements of this Paragraph.
- g. Seller represents and warrants that it shall not deny any responsibility or obligation to Buyer whatsoever on the grounds that Buyer approved any documentation prepared by Seller or that Buyer provided recommendations, assistance, modifications or alternatives for documentation prepared by Seller. Approvals or recommendations by Buyer do not limit or diminish Seller's obligations under this Order.
- h. No Non-Conforming Material Rejection Reports will be approved for those characteristics identified as a "Critical Characteristic" or "Critical Process" by Buyer.
- i. From time to time, Buyer reserves the right to add or delete "Critical Characteristics or Processes" at no additional cost or liability. For those processes that are added Seller shall comply with all the requirements of this Clause.

## 2. Quality Assurance

Seller shall, at Buyer's request, perform physical and functional configuration audits of Goods, supplies or items required to be delivered under this Order at no cost to Buyer. Seller shall at its own expense correct all discrepancies to the requirements of this Order.

3. First Article/Qualification Testing

- a. Seller shall test unit(s) as specified in this Order. At least thirty (30) calendar days before the beginning of first article tests, Seller shall notify Buyer, in writing, of the time and location of the testing so that Buyer may witness the test.
- b. Seller shall submit the first article test report as required by this Order marked "FIRST ARTICLE TEST REPORT: Order No., Lot/Item No." in accordance with the delivery schedule in this Order. Within sixty (60) calendar days after Buyer receives the test report, Buyer shall notify the Seller, in writing, of the conditional approval, approval or disapproval of the First Article Test Report. Approval or conditional approval shall not relieve Seller from complying with all requirements of the specifications and all terms and conditions of this Order. A notice of disapproval shall cite reasons for the disapproval.
- c. If the First Article is disapproved, Seller, upon Buyer's request, shall at its own expense repeat any and all First Article Tests. Seller shall, at its own expense, make any necessary changes, modifications and repairs to Goods to successfully complete First Article Testing. If Buyer is performing First Article Tests, Seller shall as requested by Buyer and at no cost to Buyer, make changes to goods in order for Buyer to complete First Article Testing. All costs relating to additional tests or retest whether performed by Buyer or Seller shall be borne by Seller.
- d. Before First Article Approval, the acquisition of materials or components or the commencement of production, and any risks associated with such effort, is performed by Seller at its sole risk. Before first article approval, the costs thereof shall not be allocable to this Order for (1) progress payments, or (2) termination settlements, if the Order is terminated for the convenience of Buyer.
- e. The First Article and production quantities shall be produced at the same facility.
- f. If Seller is permitted or required by Buyer prior to First Article Approval to acquire materials and components and commence production or deliver to the extent essential to meet the delivery schedules, such does not release Seller from any of the requirements of this Order. Notwithstanding Buyer's permission or requirement to commence Production or to deliver or to acquire materials, regardless of whether such are qualified, if First Article Tests reveal deviations or differences from Order requirements, the Seller shall make the required changes and/or replace all items produced and/or delivered under this Order at no cost to Buyer including without limitation, retrofit, removal and reinstallation costs for items in Aircraft, and shall, at no cost to Buyer, make all modifications necessary to assure that items in production comply with the requirements of this Order.
- g. In the event Seller is late in performing any of its obligations under this Order including but not limited to Seller's obligation to deliver qualified hardware, and as a result of such, Buyer's Customer withholds monies from Buyer, Buyer has the right to withhold an amount it deems reasonable until such time as Seller completes its obligations under this Order and Buyer is in receipt of payment from its Customer as the case may be.

4. Configuration Control: Seller shall comply with the requirements set forth in this Order for controlling the configuration of Goods, supplies or items required under this Purchase Order.