

PACON MFG, INC. TERMS AND CONDITIONS OF PURCHASE

- 1. Definitions.** As used herein, (i) "Buyer" means Pacon Mfg, Inc.; (ii) "Seller" means the entity identified on an Order from which Buyer is purchasing Goods and/or Services; (iii) "Goods" means the products, materials, and equipment purchased by Buyer; (iv) "Services" means services purchased by Buyer to be performed by Seller; (v) "Offer" means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer; "Statement of Work" means the specification(s), requirements, and details, if any, related to the Goods and/or Services; and (vii) "Order" means Buyer's purchase order, or similar procurement instrument, inclusive of approved change orders. All references to "terms and conditions" herein mean and include (i) these "Terms and Conditions of Purchase"; and (ii) any other terms and conditions mutually agreed upon by the Parties in writing in accordance with Section 2 herein. Buyer and Seller are sometimes referred to herein individually as a "Party" and collectively as the "Parties".
- 2. Application.** These terms and conditions apply to all Orders issued to Seller. Seller's acceptance of an Order, and any changes or amendments thereto, is expressly conditioned upon and strictly limited to Seller's acceptance of the terms and conditions. Unless otherwise agreed upon in writing by a duly authorized representative of Buyer, Buyer objects to and is not bound by any obligations that differ from, add to, or modify these terms and conditions including, but not limited to, any obligations proposed by Seller, including without limitation those contained in any forms, acknowledgements, or on Seller's website. Buyer's failure to object to any provisions contained in any communication from Seller does not waive any of these terms and conditions. An Order shall become binding upon the Parties upon the earlier of Seller (i) returning an Order acknowledgement to Buyer; (ii) commencing performance of an Order; or (iii) delivering any of the Goods or performing any Services pursuant to an Order.
- 3. Order of Precedence.** The following order of precedence shall apply in the event of an inconsistency within an Order and its related documents, as applicable: (i) the Order; (ii) these terms and conditions; (iii) referenced technical information -- e.g., drawings, Buyer's customer specifications, industry standard specifications, Buyer's customer flow-down quality clauses ("Requirements"); and (iv) the Statement of Work or Scope of Services. Any inconsistencies between any documents of concern to Seller must be communicated to Buyer for clarification, and any Seller unilateral interpretation of an inconsistency is at Seller's sole risk and liability.
- 4. Quotes.** Seller agrees that its response to any Buyer request for quotes (RFQ) shall be presumed to be an offer to fulfill the RFQ precisely as written by Buyer. Any offer to provide Goods or Services shall be deemed to be an offer to fulfill the exact terms of the RFQ unless Seller expressly and conspicuously notes all differences in writing its responding offer. All prices, Requirements and performance schedules in an RFQ will otherwise be deemed incorporated into such Seller offer, and an Order for Goods and Services shall be deemed to incorporate by reference such prices, Requirements and performance schedules such that any variation by Seller from same shall be deemed non-compliance with the Order for which Seller shall be liable hereunder. Notwithstanding the foregoing, these terms and conditions may not be changed by any Seller-generated communication except for a writing, executed by both Parties, identifying the variation by specific reference hereto.
- 5. Performance.**

 - (a) Seller is responsible for delivery of Goods and/or performance of Services under an Order. Seller is responsible for meeting all requirements specified in an Order, these terms and conditions, Requirements or Statement of Work. Seller is strictly prohibited from subcontracting any part of the Statement of Work to third parties without Buyer's prior written authorization. In the event Buyer provides such authorization, Seller shall be responsible for the subcontractor's compliance with the Requirements and these terms and conditions, including adherence to all export control requirements.
 - (b) By acceptance of an Order, Seller certifies that Goods supplied shall strictly conform to all Requirements, and that objective evidence of conformance to each specific drawing and specification Requirement is on file and available for examination by Buyer. Seller shall ensure that all items are free of Foreign Object Debris (FOD). Seller shall provide a Certificate of Conformance with each shipment that all parts, materials, processes, and finished items supplied under an Order were inspected, tested, and found to comply with the requirements of the Order. Each lot or shipment of castings, forging, raw material (chemical and physical analysis); plated parts (XRF data); or finished parts made to specifications that require reporting of numerical test results, shall be accompanied by a copy of a certified Laboratory Test Report formulated in accordance with said specifications and made by or at the order of Seller which lists the numeric results of the specific tests.
 - (c) SELLER ACKNOWLEDGES AND AGREES THAT UNAUTHORIZED MATERIAL SUBSTITUTIONS ARE NOT PERMITTED. THIS INCLUDES ANY DEVIATION FROM DRAWINGS, CUSTOMER SPECIFICATIONS, INDUSTRY STANDARD SPECIFICATIONS, FORM, SIZE, SHAPE, CHEMISTRY, MELT METHOD, ORIGIN, TEMPER/CONDITION, PRODUCT TESTING OR SURFACE FINISH. TEMPER OR CONDITION CONVERSION (EXAMPLE: HEAT TREAT TO CHANGE TEMPER) IS NOT ALLOWED. Seller shall ensure that metallic materials covered by current or obsolete/superseded specifications are produced using the standard industry practices designed strictly for the production of stock to the

specified thickness, diameter, width or cross-sectional area, achieved by thermo-mechanical processing or casting process. Chemical, electrochemical and mechanical methods used for the removal of surface scale or contamination, or the production of the required surface finish, in accordance with the material specification are acceptable. Raw material must not be re-certified with respect to thickness, diameter, width or cross-sectional area or product form. Machining or cutting of thicker product or other product forms shall not be supplied in lieu of specified product. Raw material certifications for material or parts shall reflect the form and size of the raw material as originally manufactured by the raw material producer. For government specification and standards canceled after June 1994, Seller and subcontractors at all tiers shall use the active revision of the canceled specification and standard until an acceptable replacement is included in the requirements of this Order. Contact Buyer in the event of any inconsistency in applicable specification or standard.

(d) Seller shall provide Buyer not less than five (5) business days' prior written notice of any organizational, operational, or other changes that may affect Seller's performance of an Order including, but not limited to (i) relocation of any of Seller's facilities involved in performance of an Order; (ii) transfer of any significant part of the relevant process or manufacturing operations from one facility to another; (iii) any significant changes to Seller's workforce (including any change in management or department supervision); (iv) any changes to suppliers or subcontractors; and (v) the refusal, suspension, withdrawal, or revocation of, or Seller's discovery of the existence of any grounds for any refusal, suspension, withdrawal, or revocation of, any relevant quality certification, Buyer's or its customers' approved vendor list or other manufacturing capabilities, systems, approvals or certifications germane to the Requirements.

6. Prices. Unless stated otherwise in an Order or otherwise agreed in writing by a duly authorized representative of Buyer, all prices stated in an Order are firm and final and stated in United States Dollars, and all invoices issued by Seller and payments made by Buyer shall be in United States Dollars. Seller shall not charge Buyer prices higher than those stated in an Order unless authorized in advance by a written change order or notice issued and signed by a duly authorized representative of Buyer.

Seller warrants that the prices charged for Goods and/or Services under Buyer's Order are the lowest prices charged by Seller to any other customer for substantially similar goods and services under similar conditions. If Seller charges any other customer a lower price for such similar goods and/or services, Seller shall notify Buyer and apply that price to the Goods and Services under Buyer's Order.

7. Invoices and Payment.

(a) Unless stated otherwise in an Order, Seller shall not issue invoices and Buyer shall not make any payments to Seller prior to delivery of Goods or completion of Services. Seller invoices shall identify the applicable Order number, line item number(s), part number(s), description(s), and quantity invoiced. Shipping charges, applicable taxes, or any other charges Buyer has agreed to pay and for which Buyer has not been furnished with an exemption certificate must be itemized separately on Seller's invoices. Unless such charges are itemized, Buyer may take any applicable discount based on the full amount of each invoice. Seller agrees that its books and records, or such parts thereof as may relate to the performance hereunder, shall at all reasonable times and with reasonable prior written notice be subject to inspection and audit by Buyer's employees or representatives.

(b) Buyer shall make payment to Seller within thirty (30) days of receipt of a correct invoice for Goods delivered to, or for Services provided for the benefit of, and in each case accepted by Buyer, unless the Order specifies different payment terms, in which case the payment terms specified in the Order shall apply. Unless otherwise authorized by Buyer, the payment due date for Goods delivered or Services completed early by Seller shall be calculated based on the delivery or performance schedule specified in the Order. Any payment discount offered by Seller shall be computed from the later of (i) the date of delivery or completion of performance, or (ii) the date a correct invoice is received by Buyer. For purposes of earning the discount, payment shall be deemed to have been made on the date Buyer's check is mailed, or the date funds are electronically transferred to Seller's account.

8. Taxes. The prices specified in an Order are "all in." Except as otherwise specified in an Order or unless prohibited by law, Seller shall pay all federal, state, and local sales, use, excise, or other taxes that may be levied upon any of the Goods and/or Services or the Parties hereto, by reason of the sale, delivery, or use of the Goods and/or Services. All taxes of any nature invoiced to Buyer must be specifically identified and itemized separately. If any tax, or portion thereof, included or added to the price paid by Buyer to Seller is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund.

9. Packaging and Marking. If stated in an Order, Seller shall comply with any special packaging and marking requirements; otherwise, Seller shall package and mark all Goods in accordance with best commercial practices and adequately protect Goods against damage and deterioration during transit. Packing or marking charges are not allowed unless specifically authorized in an Order. Seller's packing list must include, at a minimum, the Order number, line item number(s), part number(s), description(s), and quantity shipped.

10. Delays; Shipping; Title and Risk of Loss.

(a) Buyer's production schedules and commitments to its customers are dependent upon Seller meeting the required delivery dates stated in an Order. Accordingly, time of performance and delivery is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by Buyer that arise as a result of any delay by Seller in making deliveries of conforming Goods or in performance of Services. Seller agrees to notify Buyer in writing immediately if at any time it appears that Seller may not be able to comply with the Order's delivery schedule. Such notification shall include the actual or potential reasons for the delay, the actions being taken to remedy the delay, and the anticipated revised delivery schedule. Such notice, and any assistance furnished by Buyer to overcome delays, shall not waive Buyer's remedies for delay and resulting default, including termination rights, if Seller fails to meet the Order delivery schedule.

(b) All domestic shipments shall be Delivered At Place (DAP) at the point of delivery stated in an Order in accordance with the version of Incoterms in effect as of the date of the Order. All international shipments shall be Delivered Duty Paid (DDP) at the point of delivery stated in the Order in accordance with the version of Incoterms in effect as of the date of the Order. Seller shall bear risk of loss or damage to Goods during transit, and title to Goods shall not pass to Buyer until received at Buyer's designated location in accordance with the Order. For the avoidance of any doubt, delivery shall not be deemed complete until the Goods have been actually received by Buyer at the delivery location identified on the Order. Under no circumstance shall Buyer be the importer of record for any shipment. Unauthorized advance shipments and shipments of excess quantities may be returned at Buyer's sole option and Seller's sole risk and expense.

11. Force Majeure. Any delay or failure of either Party to perform its obligations under an Order shall be excused if such delay or failure is the result of an unforeseeable event or occurrence beyond the reasonable control of such Party, and without such Party's fault or negligence including, but not limited to, acts of God, acts of government, terrorism, fires, floods, windstorms, explosions, riots, natural disasters, pandemics, wars, sabotage, or court injunction (each a "Force Majeure Event"). If such delays exceed three (3) calendar days, Buyer may, at its option, terminate the affected Order without further liability to Seller except for Goods already delivered or Services already performed by Seller and accepted by Buyer prior to the date of such termination.

12. Quality System.

(a) Seller shall provide and maintain a quality control system to an industry recognized quality standard (e.g., AS9100, ISO9001, NADCAP) and in compliance with any other specific quality requirements identified in an Order. Seller shall use only suppliers permitted by any applicable Requirements. Seller's calibration system test and measuring equipment used for process control or inspection must be appropriately calibrated with traceability to the National Institute of Standards and Technology or in compliance with MIL-STD-45662, ISO 10012, ANSI/ISO/IEC 17025 or ANSI-Z540. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers for a minimum of ten (10) years or longer if stated in an Order. Seller shall contact Buyer for disposition after record retention period elapses. Seller shall oversee requirements for qualification of personnel including their contribution to product/service conformity, product safety, and the importance of ethical behavior.

(b) If at any time Seller detects a process, material, or other nonconformance, Buyer shall be notified in writing no later than three (3) business days after Seller's discovery. Nonconforming Goods shall be documented indicating (i) the nature of the discrepancy (ii) number of units affected, (iii) root cause, (iv) recommended disposition, and (iv) corrective/preventative action. A copy of the nonconformance document shall accompany each affected shipment. Written authority to ship nonconforming Goods must be obtained from Buyer prior to shipping. Nonconforming material shipped without prior approval is subject to return at Seller's risk and expense. Seller acknowledges it does not have Material Review Board (MRB) authority and shall not rework or repair without Buyer's prior written authorization.

(c) Seller understands and agrees that on-time delivery, product conformity and Supplier Corrective Action Requests may contribute to Seller's inclusion in or exclusion from Buyer's Approved Supplier List and its risk status.

13. Inspection. Buyer reserves the right to inspect all Goods prior to shipment by Seller, and in furtherance thereof Seller shall permit employees and/or representatives of Buyer and Buyer's customers and regulatory authorities to have access to Seller's facilities at all reasonable hours. Where work is subcontracted to third parties, Seller shall secure rights for Buyer to inspect, test, and review work at subcontractor's premises. If an Order specifies that Goods shall be subject to inspection at Seller's facilities, Seller shall provide reasonable space and assistance for the safety and convenience of Buyer's and Buyer's customer's employees and/or representatives. At the time of inspection, Seller shall make available to such representatives copies of all specifications, drawings, and other technical data applicable to the Goods ordered. Seller shall provide a Certificate of Conformity with all deliveries certifying that Goods delivered and/or Services performed meet all requirements of the Order and any Statement of Work thereunder. All nonconforming Goods and materials designated as scrap shall be permanently marked and controlled as such until physically rendered unusable.

NO INSPECTION, TEST, DELAY OR FAILURE TO INSPECT OR TEST, OR FAILURE TO DISCOVER ANY DEFECT OR OTHER NONCONFORMANCE SHALL RELIEVE SELLER OF ANY OBLIGATIONS UNDER AN ORDER OR IMPAIR ANY RIGHTS OR REMEDIES OF BUYER, INCLUDING REVOCATION OF ACCEPTANCE, NOR LIMIT OR AFFECT ANY EXPRESS OR IMPLIED WARRANTIES.

14. Acceptance. Notwithstanding such inspection, all Goods and Services shall be subject to final inspection and acceptance by Buyer within fifteen (15) calendar days of receipt (Goods) or completion (Services). Payment for any Goods and Services under an Order shall not constitute acceptance thereof. Buyer reserves the right to reject and refuse acceptance of Goods that do not conform to the applicable Requirements. Nonconforming Goods shall be returned to Seller for full credit, repair, or replacement at Seller's sole risk and expense, including transportation charges, and Buyer will suspend payment of any invoice relating such nonconforming Goods; provided, however, that Buyer may scrap non-conforming Goods priced by Seller at \$500 or less without liability therefor to Seller. Buyer's acceptance of Goods or Services is not a waiver of Buyer's right to reject and/or return Goods or declare the Services non-conforming where they are subsequently found to not conform to the Order, or by reason of patent or latent defect, or other breach of warranty, or to make a claim for damages, including manufacturing costs, damage to material or articles caused by improper boxing, crating, or packing, or other damages. Such rights and remedies shall be in addition to any other remedies provided by law.

15. Warranties.

(a) All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference, apply to the Order, and are supplemented by the following express warranties. For a period of twelve (12) months from Buyer's acceptance, or such other period as may be agreed by the Parties in writing or specified in an Order (the "Warranty Period"), all Goods and/or Services shall (i) conform with any and all specifications, drawings, samples, or other descriptions referenced in and/or furnished with the Order; (ii) be merchantable, of good design, material, and workmanship; (iii) be new and not contain used or reconditioned material; (iv) be free from defects; (v) be suitable for their intended purpose; (vi) not infringe upon or violate the legal or equitable rights of any third party or out of any license, franchise, patent, trademark, or other proprietary right, now or hereafter in effect; (vii) be free and clear of any security interests, liens or other encumbrances; and (viii) comply with all applicable laws and regulations.

(b) If Buyer determines there is a defect in the Goods or Services at any time during the Warranty Period, Seller shall, at its sole expense and without delay, repair or replace the defective Goods or re-perform the defective Services or, at Buyer's sole option, refund to Buyer the price of the defective Goods or Services. In the event that it is impractical to return the rejected Goods to Seller, Buyer may require Seller to carry out the necessary re-design, repair, modification or replacement as appropriate at Seller's expense where the Goods are located. In the event that it is impractical for Buyer to have Seller re-perform defective Services, Buyer may engage another vendor to perform the defective Services at Seller's sole cost and expense. Any and all repaired or replaced Goods or re-performed Services shall be covered by this warranty for a new period equal to the original Warranty Period. Seller shall indemnify and hold Buyer harmless from and against all liability, loss, consequential and incidental damages, and expenses resulting from the breach of any warranty, or resulting from any other act or omission by Seller, its agents, or employees, while in the performance hereof.

(c) If at any time Seller becomes aware that the Goods and/or Services become non-conforming for any reason, Seller must immediately notify Buyer in writing. In addition, if required by Buyer, Seller shall provide Buyer a report identifying the cause of the non-conformance and any additional Goods or Services that may be affected by the defect, and/or the repair action to be taken.

(d) The forgoing warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment and shall extend to Buyer's customers at whatever tier. The rights and remedies granted to Buyer under this Section are in addition to any other rights or remedies provided elsewhere in the Order or under law.

16. Counterfeit Parts.

(a) As used herein, "Part" means any material, product, component, device, module, assembly, subassembly, or the like sold or delivered by Seller to Buyer either as Goods or as a constituent part of the Goods. "Counterfeit Part" means a Part that is (i) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the Part's legally authorized source and/or has been misrepresented to be an authorized item of the legally authorized source, and/or (ii) previously used parts provided or represented as "new." A Part is a "Suspect Counterfeit Part" if visual inspection, testing, or other information provides reason to believe that the Part may be a Counterfeit Part. As used herein, "authentic" means (i) genuine; (ii) from the legitimate source claimed or implied by the marking and design of the Part offered; and (iii) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the Part.

(b) Seller represents and warrants that only new and authentic Parts and materials are used in Goods ordered by Buyer and that such Goods contain no Counterfeit Parts. No other Part other than a new and authentic Part shall be used unless approved in advance in writing by Buyer's duly authorized representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall

only purchase authentic parts/components directly from original equipment manufacturers (“OEMs”) and original component manufacturers (“OCMs”) or through the OEM’s/OCM’s authorized distributors. Seller shall deliver to Buyer with Goods, full chain of custody OEM/OCM acquisition documentation, and OEM/OCM documentation that authenticates traceability of the Parts to the applicable OEM/OCM. Purchase of Parts from independent distributors is not authorized unless first approved in writing by Buyer’s duly authorized representative.

(c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to Buyer and Buyer’s written approval before Parts are procured from sources other than OEMs/OCMs or through the OEM’s/OCM’s authorized distributors. Seller shall provide copies of such documentation for its system for Buyer’s inspection upon Buyer’s request. Seller’s system shall be consistent with applicable industry standards including, as a minimum, AS5553 for the detection and avoidance of Counterfeit Parts and Suspect Counterfeit Parts.

(d) Acceptance of Buyer’s Order constitutes confirmation by Seller that it is the OEM, OCM, or a franchised or authorized distributor of the OEM/OCM for the Goods procured under an Order. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the Parts is available upon request. Should Seller become aware of a confirmed or suspect Counterfeit Part that, by any means, has been delivered to Buyer or acquired for an Order whether or not delivered to Buyer, Seller shall notify Buyer in writing as soon as possible but not later than three (3) business days of such discovery. Seller shall verify receipt of this notification by Buyer. This requirement shall survive expiration or completion of an Order. Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required by Buyer to remedy the use or inclusion of such Parts. Seller shall quarantine remaining Suspect Counterfeit Parts and Counterfeit Parts, in inventory and make them available for investigation by appropriate government authorities.

(e) Seller shall flow the requirements of this Section to its subcontractors and suppliers at any tier for the performance of an Order.

17. Changes. Buyer may at any time, by a written change order or similar instrument issued by a duly authorized representative of Buyer, make changes within the general scope of an Order including, but not limited to, changes to (i) specifications, drawings, designs, or description of Goods or Services; (ii) method of shipment or packaging of Goods; (iii) reasonable adjustments in quantities or delivery schedules or both; and (iv) place of delivery or performance. Seller shall comply promptly with such direction. If Buyer’s change order causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment may be made to the Order price and/or delivery schedule and the Order shall be modified in writing accordingly. Any claim for adjustment under this Section shall be deemed waived unless asserted in writing within five (5) business days from the date of receipt by Seller of the change order, provided, however, that Buyer in its sole discretion may receive and act upon such claim submitted at any time prior to final payment under the Order. Any such claim must set forth the amount of any increase or decrease in the cost of performance resulting from the change in the format and detail reasonably specified by Buyer. Failure to agree upon an equitable adjustment shall not relieve Seller from proceeding without any delay in performance of the Order as changed. Where the cost of property made obsolete or excess as a result of a change order is included in Seller’s claim for adjustment pursuant to this Section, Buyer shall have the right to prescribe the manner of disposition of such property. Buyer’s engineering and technical personnel may from time to time render assistance, give technical advice, or exchange information with Seller’s personnel in relation to an Order. Unless incorporated as a change in accordance with this section: (a) such assistance, advice, and/or exchange of information shall not be construed as Buyer’s consent or authority to effectuate any changes to the Order or the Goods and/or Services provided thereunder; and (b) no resulting change in Goods and/or Services or provisions of an Order be binding upon Buyer.

18. Support Obligations. Seller shall maintain the ability to provide, and shall provide, product support for the Goods which shall include, without limitation; (a) assuring that subcomponents and materials are available; (b) maintaining tooling and other production capability; and (c) reengineering components or systems to address obsolescence for a period of not less than seven (7) years after the last delivery under the Order. If Seller discontinues the production of any Goods at any time within two (2) years after the final delivery of such Goods under Buyer’s Order, Seller shall give Buyer at least one hundred and eighty (180) days’ prior written notice of such discontinuance. Seller shall accept Orders from Buyer for such quantity of Goods as required by Buyer, at the prevailing quality and at no more than the prevailing price until Buyer has secured an acceptable alternative source of supply or, at Buyer’s option, agree free access rights to Buyer or a third party designated by Buyer to the intellectual property in the Goods.

19. Stop Work. Buyer may direct Seller to stop work on an Order for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the Parties may agree. In such event, Seller shall take all reasonable steps to minimize the incurrence of costs allocable to the Order during the period of work stoppage. Within such period, Buyer shall either terminate the Order in accordance with the termination provisions herein or direct Seller to continue performance of the Order by providing written notice to Seller. In the event a stop work continues beyond the ninety (90) day period, an equitable adjustment to the price, delivery

schedule, or other provision(s) to the extent impacted by the stop work shall be made in accordance with the principles of the "Changes" Section herein.

20. Cancellation; Termination for Convenience.

(a) Buyer may cancel or terminate performance or work under an Order in whole or in part for any reason by providing written notice to Seller. Upon receipt of such notice, Seller shall (a) stop work on the date and to the extent specified in the notice; (b) terminate all lower-tier purchase orders and subcontracts to the extent they relate to the terminated work; (c) promptly advise Buyer of the quantities of materials and work-in-process on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (d) comply with Buyer's instructions regarding transfer and disposition of title of such material and work-in-process; and (e) submit all Seller's claims resulting from such termination within five (5) business days of the date of the notice of termination.

(b) Buyer shall have the right to check such claims at any reasonable times by inspecting and auditing the records, facilities, work-in-process, and materials of Seller relating to the Order. Buyer shall pay the Order price for completed Goods or Services performed and accepted by Buyer and the substantiated cost to Seller of raw materials and work-in-process allocable to the terminated work based on any audit Buyer may conduct under generally accepted accounting principles, less (i) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (ii) the agreed value of any items used or sold by Seller with Buyer's consent; and (iii) the cost of any defective, damaged, or destroyed work or material.

(c) Buyer shall make no payment for finished work, work in process, or raw material fabricated or procured by Seller in excess of the Order. Payments made under this Section shall not exceed the aggregate price specified in the Order, less payments otherwise made or to be made, and downward adjustments shall be made for costs of raw materials and work-in-process to reflect any indicated loss on the entire Order had it been completed. Payment made under this Section constitutes Buyer's sole liability in the event Buyer's Order is terminated hereunder.

21. Termination for Default.

(a) Buyer may, by written notice to Seller, terminate an Order for default in whole or in part if (a) Seller fails to deliver the Goods or to perform the Services within the time specified in the Order or any extension authorized by Buyer unless such failure is the result of a Force Majeure Event as defined above; (b) Seller fails to make progress so as to endanger performance of the Order; (c) Seller fails to perform any of the provisions of the Order; (d) Seller makes any organizational, operational, or other changes that, in the sole opinion of Buyer, adversely affects Seller's performance of or ability to perform the Order; (e) Seller experiences any refusal, suspension, withdrawal, or revocation of any relevant quality certification, Buyer's or its customers' approved vendor list or other manufacturing capabilities, systems, approvals or certifications germane to the Requirements; or (f) Seller is adjudicated bankrupt, files a petition for bankruptcy, makes an assignment for the benefit of creditors, or if an action under any law for the relief of debtors is taken. Buyer's right to terminate an Order under subparagraphs (b) and (c) above may be exercised if Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of Buyer's notice specifying the failure.

(b) Unless otherwise stated herein or in the Order, termination of an Order for default shall entitle Buyer to a full refund of all payment made to Seller or its subcontractors pursuant to the Order. If Buyer terminates an Order in whole or in part, Buyer may acquire Goods or Services similar to those terminated from a third party, and Seller shall be liable to Buyer for any excess costs for those Goods or Services. However, Seller shall continue any portion of the work not terminated by Buyer.

(c) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Goods, partially completed Goods, and materials, parts, tools, dies, fixtures, plans, drawing, information, and contract rights (collectively referred to as "Manufacturing Materials" in this Section) that Seller has specifically produced or acquired for the terminated portion of the Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. Buyer shall pay the Order price for completed Goods delivered and accepted. Seller and Buyer shall agree on the amount of payment for the partially completed Goods and Manufacturing Materials delivered and accepted and for the protection and preservation of the property. Buyer may withhold from these amounts any sum that Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders. If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer. The rights and remedies of Buyer in this Section are in addition to any other rights and remedies provided by law, or under the Order.

22. Intellectual Property.

(a) Seller and Buyer acknowledge and agree that certain information exchanged between them pursuant to this Agreement will be confidential. "Confidential Information" includes all written or tangible information disclosed by Seller to Buyer or to Buyer by Seller

marked as “Confidential” or “Proprietary” at the time of disclosure. “Confidential Information” also includes any Buyer-disclosed information about its customers and their products and requirements, and all information disclosed in any other manner that is indicated as “Confidential” or “Proprietary” at the time of disclosure and is thereafter summarized and marked as “Confidential” or “Proprietary” in a writing delivered to the receiving party within thirty (30) days of the initial disclosure. Confidential Information of the disclosing party will not be disclosed by the receiving party to any third party, except to its Affiliates who are bound by like obligations of confidentiality and non-use, and will not be used by the receiving party for purposes other than those contemplated by this Agreement, unless or until:

- (i) such information becomes publicly known through no fault of the receiving party; or
- (ii) such information was already publicly known or in the receiving party's possession prior to the disclosure of said information to the receiving party; or
- (iii) such information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality with respect thereto to the disclosing party; or
- (iv) such information is subsequently developed by an employee or agent of the receiving party without actual knowledge of the disclosing party's disclosure; or
- (v) such information is approved for disclosure by prior written consent of the disclosing party; or
- (vi) such information is required to be disclosed by applicable laws, regulations, or court order, provided that the disclosing party gives the disclosing party prompt notice of any such requirement and cooperates with the disclosing party in attempting to limit such disclosure.

The obligations of confidentiality and non-use of this Section will remain in effect for a period of three (3) years from the date of disclosure. For the purpose of this Agreement, “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. A party is deemed to control another entity if it owns directly or indirectly greater than fifty percent (50%) of the outstanding voting security, capital stock, or other comparable equity or ownership interest of such entity, or exercises equivalent influence over such entity.

(b) All Goods produced by Seller for Buyer will, upon payment therefore, be the exclusive property of Buyer. For data other than computer software delivered pursuant to or in connection with an Order, Seller grants to Buyer, and all others acting on its behalf, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense to its subcontractors, customers and their end-users, of all such data, including copyrighted data, to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of Buyer for Buyer, its subcontractors', customers' or their end-users' use or performance. For computer software delivered pursuant to or in connection with Buyer's Order, Seller grants to Buyer, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense to its subcontractors, customers and their end-users, of all such computer software, including copyrighted or patented software, to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of Buyer for Buyer, its subcontractors', customers' or their end-users' own use or performance.

(c) If Buyer furnishes Seller with material or equipment including, but not limited to, tools, jigs, designs, dies, molds, fixtures, test equipment, or other property owned or paid for or agreed to be paid for by Buyer (“Buyer-Owned Property”), title thereto shall remain or vest in Buyer, and Seller shall label and identify all Buyer-Owned Property as Buyer's property. Seller must examine all Buyer-Owned Property furnished by Buyer to ascertain its suitability for the purpose. All Buyer-Owned Materials shall (i) be used only for performance of Buyer's Order; (ii) at all times be properly protected and maintained by Seller to ensure it is kept free from damage, deterioration, contamination and misuse; (iii) be covered, at Seller's expense, by adequate liability, damage, and fire insurance for the replacement cost; (iv) not be commingled with the property of Seller or others; (v) not be moved from Seller's premises without prior written authorization of Buyer; and (vi) upon Buyer's request, be immediately returned to Buyer at Seller's expense in good condition, reasonable wear and tear excepted. Seller shall assume all risk of loss or damage to Buyer-Owned Materials while they are in the custody of Seller. Seller shall be responsible for any loss, damage, or destruction to such Buyer Owned Property. All Buyer-Owned Property shall be held where Buyer instructs. Buyer reserves the right to enter any premises, upon prior notice, where Buyer-Owned Property is located in order to inspect, stock check, or obtain the return to Buyer such Buyer-Owned Property. In the event that materials and/or equipment have only been partly funded by Buyer, Buyer and Seller shall jointly own the material and/or equipment in proportion to their respective funding. In circumstances where Buyer terminates the Order, Buyer, at its sole option, may become the sole owner of the partly funded material and/or equipment upon payment of a reasonable sum considering Seller's investment in the material and/or equipment tooling and its current condition.

(d) Seller shall indemnify and hold Buyer harmless against any claims against, or losses or damages incurred by, Buyer and arising from Buyer's use of third-party intellectual property supplied to it by Seller or whose use by Buyer was requested by Seller.

23. Insurance. Seller shall procure and maintain insurance coverage with carriers reasonably satisfactory to Buyer, including (i) Workers Compensation insurance with statutory limits, as required by the state in which the Services or work are to be performed; (ii) Employer's

Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence; (iii) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence covering liability for bodily injury and property damage; (iv) Automobile Liability insurance coverage with a limit of no less than one million dollars (\$1,000,000.00) per accident; and (v) Excess or Umbrella Liability insurance coverage with a limit of no less than one million dollars (\$1,000,000.00) per occurrence in excess of each of the above mentioned policies. If an Order provides for Services or work to be performed by Seller, or if Seller's employees, representatives, agents, vendors, or subcontractors, are required to perform work on property owned and controlled by Buyer or on property of third-parties, all liability insurance policies shall name Buyer, its officers, directors, employees, affiliates, successors, and assigns, as additional insureds. Seller shall provide evidence of the required insurance coverages and file with Buyer a Certificate of Insurance reasonably acceptable to Buyer prior to commencement of Services or work. The insurance policies and coverages required by this Section shall contain a provision that any such policies shall not be cancelled, allowed to expire, or reduces the coverages or limits in any manner unless at least thirty (30) days' prior written notice has been given to Buyer. Seller shall waive all rights of subrogation against Buyer under the foregoing policies. All insurance coverages shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificate of Insurance referred to herein). Failure to obtain and maintain the required insurance shall constitute a material breach of the Order and Seller shall be liable to Buyer for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by Buyer.

24. Indemnification; Limitation of Liability.

(a) Each Party agrees to indemnify, defend, and hold harmless the other Party, its officers, directors, employees, and representatives (the "Indemnified Parties") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action for death, personal injury, or property damage arising from any breach of violation of these terms and conditions or negligent act or omission in connection with the performance of an Order.

(b) Except for violations of law, under no circumstances shall Buyer be liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to an Order including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of contract, warranty, negligence, or any other type of claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. To the extent that this limitation of liability conflicts with any other section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this section.

25. Compliance with Law; Ethics.

(a) Seller understands and agrees that Buyer is committed to uncompromising ethical standards, strict adherence to laws and regulations, and customer satisfaction. The following provisions are incorporated by reference as part of an Order: (a) Seller represents and warrants that the provision and shipment of Goods and/or the provision of Services or work to be performed by Seller under an Order are in compliance with all applicable federal, state, and local laws, orders, rules, ordinances, and regulations relating to the performance of an Order, including, but not limited to, (i) the Equal Employment Act of 1972 and regulations thereunder; (ii) the Fair Labor Standards Act of 1938, as amended; (iii) orders of the U.S. Department of Labor, as applicable; (iv) all U.S. and international prohibitions on child labor, forced labor, slavery, and human trafficking; (v) the manufacture, labeling, transport, import, export, licensing, permitting, approval or certification of Goods; (vi) environmental matters, hiring, wages, hours and conditions of employment, immigration, worker documentation and permits, supplier or contractor selection, discrimination, occupational health or safety, and motor vehicle safety; and (vii) all laws and regulations of Seller's place of performance; and (b) Seller warrants and represents that it has and shall maintain all registrations, licenses and permits required for the performance of an Order.

(b) Seller shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) to any employee of Buyer for the purpose of obtaining or rewarding favorable treatment. By accepting an Order, Seller warrants and represents that it has not made or solicited, and shall not make or solicit, kickbacks in violation of the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd1 through 78dd3, as amended, the Anti-Kickback Act of 1986 (41 USC 51-58), the anticorruption laws, regulations and policies of the home country of Seller, and/or the anticorruption laws, regulations and policies of any other country with jurisdiction over the activities in the performance of the Order.

(c) Any modification or amendment to an Order shall be deemed a recertification of the accuracy and truthfulness of the foregoing representations and warranties herein. If at any time Seller becomes aware of information or circumstances that suggest any of the representations, warranties, and covenants referenced in this Section may not be accurate, it shall notify Buyer immediately in writing,

but not more than five (5) business days after becoming aware of such circumstances. Seller is encouraged to communicate any concerns or questions regarding the ethics and values of Buyer via Buyer's CEO.

(d) Seller acknowledges and agrees that Buyer has adopted, and Buyer's customer Boeing requires the flow down of:

Code of Basic Working Conditions and Human Rights: Boeing is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of the commitment, Boeing has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure the commitment is fulfilled. This code may be downloaded at <http://www.boeing.com/aboutus/culture/code.html> Boeing strongly encourages suppliers to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting supplier's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Suppliers shall include the substance of this clause, including the flow down requirement, in all subcontracts awarded by supplier for work under this contract.

Ethics and Compliance Program: Supplier acknowledges and accepts full and sole responsibility to maintain and ethics and compliance program appropriate for its business throughout the performance of this contract. Boeing strongly encourages supplier to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Supplier shall publicize to its employees who are engaged in the performance of work under the Contract that they may report any concerns of misconduct by Boeing or any of its employees or agents by going to Ethics@Boeing. Supplier shall convey the substance of this clause to its suppliers.

Seller agrees not to take or omit any action which could reasonably be expected to cause Buyer to become out of compliance with the foregoing Boeing requirements.

26. Conflict Minerals. Upon request of Buyer, Seller shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other materials that are designated under applicable rules of the United States Securities and Exchange Commission ("SEC") as a "conflict mineral". If no Goods contain one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify same to Buyer. If any Goods contain one or more conflict minerals, Seller shall certify to Buyer the country of origin of any such conflict mineral(s) or that the conflict mineral(s) came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict mineral(s), and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict mineral(s) that are necessary to the functionality or production of any Goods originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

27. Export Compliance.

(a) The shipment of Goods, provision of Services, and delivery and use of technical information under an Order is subject to all decrees, statutes, laws, legislation, rules, and regulations which govern export, reexport, or otherwise pertain to the export controls of the United States and any other country in which the Goods are manufactured, transferred, sold, shipped, or exported, including, but not limited to, (i) the U.S. Department of Commerce Export Administration Regulations (EAR) and (ii) the U.S. Department of State International Traffic in Arms Regulations (ITAR). Seller hereby agrees to indemnify Buyer for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

(b) Information furnished to Seller under an Order may contain technical data, as defined in ITAR Section 120.10. Seller is advised and hereby acknowledges that such technical data, relating to export controlled items appearing on the U.S. Munitions List (USML) at ITAR Section 121, may not be exported, disclosed, or transferred, as defined in ITAR Section 120.17, to any foreign person (whether in the United States or abroad), as defined in ITAR Section 120.16, without first complying with all relevant requirements of ITAR Sections 120-130 (22 CFR 120-130), including the requirement for obtaining any written export authorization from the United States Department of State,

Directorate of Defense Trade Controls (DDTC), or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be. A downloadable copy of the ITAR is accessible at the DDTC web site at www.pmdtcc.state.gov.

(c) Seller is further advised that if it engages in the United States in the business of either manufacturing or exporting defense articles as defined in ITAR Section 120.6 or defense services as defined in ITAR Section 120.9, then Seller is required by ITAR Section 122 to register with the DDTC using forms accessible at the DDTC website at www.pmdtcc.state.gov. Manufacturers of defense articles who do not engage in exporting of same must nevertheless register with the DDTC. Registration does not by itself confer export rights or privileges, but is generally a precondition to the issuance of any license or other approval by the DDTC.

(d) Information furnished to Seller under an Order, if not regulated by the ITAR, may contain technical data, as defined in the United States Department of Commerce, Bureau of Industry and Security (BIS), Export Administration Regulations (EAR) Part 772 (15 CFR 772) relating to export controlled items appearing on the Commerce Control List (CCL) at EAR Part 774 (15 CFR 774). Seller is advised and acknowledges that such technical data may not be exported out of the United States, or to a foreign person in the United States, as defined in EAR Part 772, without complying with all relevant requirements of EAR Parts 730-774 (15 CFR 730-774), including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a license exception applies, as the case may be. A downloadable copy of the EAR is accessible at the BIS website at www.bis.doc.gov.

28. Attorneys' Fees. In the event of any legal proceeding between the Parties arising from an Order, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses (including court costs and reasonable fees for attorneys, accountants and expert witnesses) incurred in the course of the proceeding.

29. Disputes, Delivery Deemed Conclusive, Governing Law, Jurisdiction. In the event of any dispute, the books and records of Buyer shall be conclusive as to the amount and price of goods, due date, delivery date, and terms and conditions. Seller and Buyer agree that (a) all matters related to any Order shall be governed and controlled by the internal laws of the State of California, (ii) the rights and obligations of the parties hereto shall not be governed by the United Nations Convention of Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods (except as necessary to interpret delivery terms), and (c) any local, state or federal courts having their situs within or deemed, for jurisdictional purposes only, to have authority over, either the County of Alameda in the State of California shall have exclusive jurisdiction over all matters arising from an Order and the Parties hereby consent to such jurisdiction.

30. Alternative Dispute Resolution. Any dispute or claim arising from or relating to an Order or performance under it shall first be addressed amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate in order to maintain the status quo while this procedure is being followed. If the Parties fail to resolve any dispute arising under this Agreement, either Party may seek arbitration as follows: (a) by written notice to the other Party, submitting the dispute to binding arbitration, in accordance with the then current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), each Party to bear equally the costs of the arbitration; (b) if the Parties are not successful in resolving the dispute through self-help or one of the Parties refuses to participate in arbitration, the dispute shall be resolved by litigation; (c) any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA; (d) the locale of any arbitration will be in Alameda County, California, or as otherwise agreed to by the parties in writing; (e) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA; (f) the language of the arbitration must be in English; (g) any arbitration award must state the arbitrator's material findings of fact and conclusions of law; (h) a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, and (i) a prevailing Party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorney's fees and costs.

31. No Waiver. Forbearance or failure of Buyer to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Seller, shall not affect or impair Buyer's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Buyer's rights in case of any subsequent default of Seller.

32. Severability. If any provision of these terms and conditions are unenforceable or invalid, these terms and conditions shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

33. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller. Seller shall not assign, delegate, sublicense, transfer an Order or any of its obligations thereunder, whether by operation of law or otherwise, without Buyer's written consent, and any assignment, delegation, sublicense, or transfer (a) without such written consent is void and of no effect and (b) if consent is given, shall be binding upon, and inure to the benefit of the successors and assigns of Seller. Buyer shall, without

Seller's consent, have the right to assign an Order to any successor, by way of merger or consolidation, or the acquisition of substantially all of the entire business and assets of Buyer relating to the subject matter of the Order, provided that such successor shall expressly assume all of Buyer's obligations and liabilities under the Order.

34. Survival; No Auto-Renew. Any section or provision herein which contemplates performance or observance subsequent to any termination or expiration of an Order, or which by its nature should survive, shall survive any termination or expiration of the Order and continue in full force and effect. Notwithstanding the foregoing, any obligation of Buyer to Seller, to the extent it features or contemplates an auto-renew feature, is null and void.

35. Entire Agreement. Upon Seller's acceptance of Buyer's order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify of effect terms hereof.