

10/5/05 Version

**UTC STANDARD TERMS AND CONDITIONS OF PURCHASE**

(Referred to by Sikorsky Aircraft business units as SA908)

**October 5, 2005 Version**

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10/5/05 Version

These terms and conditions are applicable to Orders placed by UTC and its affiliates both under Agreements (as defined below) or otherwise.

#### **ACCEPTANCE**

- A. This Order must be accepted as indicated in the Agreement or, if no Agreement or the Agreement does not provide, in writing by Supplier within the time specified on the face of this Order or, if not so specified, within a reasonable time of Supplier's receipt hereof.
- B. If for any reason Supplier fails to accept this Order in writing or as specified in the applicable Agreement, the shipment by Supplier of any Goods (or lots thereof) ordered hereby, the furnishing or commencement of any Services called for hereunder (including preparation for manufacture), the acceptance of any payment by Supplier hereunder, or any other conduct by Supplier that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Supplier of this Order and all terms and conditions hereof.
- C. Any terms and conditions proposed in Supplier's acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Order and any applicable Agreement 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 Supplier 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 Supplier. In the event any such proposed terms would, if accepted by Buyer, vary the liability or warranty, aspects of these terms then such proposed terms will be null and void unless the acceptance by Buyer is made in writing by a member of Buyer's purchasing department.
- D. If this Order is issued by Buyer in response to an offer by Supplier and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Supplier assent to all such additional and different terms herein and acknowledge that this Order constitutes the entire agreement between Buyer and Supplier with respect to the subject matter hereof. Supplier shall be deemed to have so assented and acknowledged unless Supplier notifies Buyer to the contrary in writing within ten (10) calendar days of receipt of this Order.

## DEFINITIONS

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

- A. "Agreement" means the master terms agreement, long term agreement or other similar agreement that references these terms and conditions and provides for the issuance of Releases.
- B. "Buyer" means the United Technologies Corporation ("UTC") affiliated legal entity that issues a Release that references these terms and conditions and any successor or assignee of any such entity.
- C. "Delivery Date" means date of delivery as specified in this Order.
- D. "Delivery System" means a computer based, web enabled delivery scheduling system.
- E. "Goods" means goods, supplies, or items that include, but are not limited to, those part numbers, model numbers, and/or descriptions set forth on the face of this Order. These terms 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. Where the context permits, the use of the term Goods shall include Services.
- F. "Lead Time" means the minimum period between the date of an Order and the Delivery Date.
- G. "Need Date" means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.
- H. "Release" or "Order" means a paper or electronic document used to initiate the order of Goods or Services such as a purchase order, a firm schedule or other authorization, including change notices, supplements or modifications thereto. The use of either term herein incorporates the other.
- I. "Services" means any effort performed by Supplier necessary or incidental to the sale of Goods by Supplier under a Release including design, engineering, installation, repair and maintenance. The term "Services" shall also include any effort specifically required by a Release.
- J. "Shipping System" means a shipping notice process/shipping opportunity system.

K. "Supplier" means the legal entity (alone or those entities working together, including subcontractors, regardless of their relationship) providing Good and Services or otherwise performing work.

1. **Specifications**

Supplier shall comply with all purchasing notes, drawings and specifications contained, specified and/or referenced in the Agreements and Releases that incorporate these terms and conditions, including ASQR-01 or its then current successor, and with descriptions and specifications contained in Supplier's literature or proposal to the extent consistent with this Order and beneficial to Buyer.

2. **Delivery**

- (a) If Buyer requires the use of a Delivery System, a Shipping System and/or, or electronic data exchange billing and invoicing systems, Supplier shall make best efforts to install and use Buyer's systems at the earliest practicable time.
- (b) Time is of the essence in Supplier's performance of an Order, and Supplier shall deliver Goods and perform Services by the Delivery Date. A failure by Buyer to enforce a right with respect to Supplier's failure to complete a delivery obligation on time shall not waive Buyer's right to require strict compliance with delivery obligations, or any other obligation to timely perform, in the future.
- (c) Delivery shall be to the location directed by Buyer. Delivery by Supplier to a third party warehouse that is not the location directed by Buyer shall not be considered delivery to Buyer for the purposes of this Order unless otherwise agreed to by the Parties.
- (d) Once Supplier installs Buyer's Delivery System and the Goods and/or Services are placed on it for delivery purposes, the delivery information and the rules governing the system shall supersede the delivery information set forth in this Order, and the delivery information in the Delivery System shall establish the firm Delivery Date ("Firm Delivery Date") for the Goods and/or Services.
- (e) Unless otherwise agreed to by the Parties, Delivery Dates which do not allow sufficient Lead Times (which Lead Times shall be established in advance by the Parties) shall be considered Need Dates and shall not be binding on Supplier, provided however, Supplier shall use all commercially reasonable efforts to meet Need Dates. Buyer may use Need Dates in measuring Supplier's

performance for resource planning, quality and reliability rating purposes.

- (f) If Supplier's Lead Times prevent delivery by the Need Date, Buyer may purchase the quantity of the Goods ordered with insufficient Lead Time from another Supplier without regard to the existence of any requirements provisions in any contract between Buyer and Supplier and Buyer shall be relieved of any obligation to purchase such quantities from Supplier.
- (g) Any forecasts of Delivery Dates, which are set forth in the Delivery System are estimates and are for planning purposes only. Buyer and Supplier shall have no duty to comply with them until they become Firm Delivery Dates as established by the Delivery System. Forecasts shall not relieve, modify, or otherwise alter Supplier's obligations to meet the required Firm Delivery Dates or quantity requirements. Any costs incurred by Supplier associated with Goods to be delivered beyond Firm Delivery Dates or Lead Times will be solely at Supplier's risk.
- (h) Supplier shall not, without first obtaining Buyer's written consent, deliver any Goods or Services to Buyer before the Delivery Date. If Supplier tenders Goods for delivery to Buyer earlier than the Delivery Date, Buyer may, in its absolute discretion, either: (i) refuse delivery and require re-delivery at Supplier'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.
- (i) Once Supplier adopts the Shipping System, Supplier shall only ship in accordance with the rules established by the Shipping System, and shall make use of the bar codes and other documentation generated by the Shipping System.
- (j) If Supplier tenders Goods under the Shipping System that do not comply with its rules, Buyer may, in its absolute discretion, either: (i) refuse delivery and require re-delivery at Supplier's expense in compliance with the rules; or (ii) retain such Goods and charge Supplier any commercially reasonable costs incurred as a result of Supplier's failure.
- (k) Supplier acknowledges that Buyer's complex manufacturing environment requires flexibility in delivery scheduling. Buyer may reschedule Delivery Dates as it, in its sole discretion, deems appropriate, without liability to Supplier. Notwithstanding the Changes clause, prices shall not be adjusted for any deviation

between delivery information originally provided with an Order and Firm Delivery Dates, or forecasts of delivery requirements and Firm Delivery Dates.

3. **Buyer-Furnished and Buyer-Funded Items**

- (a) All materials, tooling, equipment, Buyer's Proprietary Information and parts for repair or service that Buyer is required to furnish to Supplier under this Order ("Buyer-Furnished Items") shall be delivered in sufficient time to enable Supplier to meet Delivery Dates. Buyer shall have no liability to Supplier for any delays or failures in the delivery of Buyer-Furnished Items. If Buyer-Furnished Items are not delivered to Supplier in sufficient time to enable Supplier to meet Delivery Dates, Supplier may notify Buyer of the delay and shall be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Supplier's sole remedy.
- (b) Title to any Buyer-Furnished Items shall remain with Buyer or Buyer's customer as the case may be.
- (c) Title to all tooling, test equipment and material identified as a separate line item under this or any previous Orders or referred to in any agreement between Buyer and Supplier and fabricated or acquired by Supplier ("Buyer-Funded Items") shall vest in Buyer.
- (d) Supplier guarantees that Buyer-Funded Tooling shall produce the number of parts that are specified in the purchasing documentation ("Yield") and Supplier is responsible for repair, refurbishment or replacement of any Buyer-Funded Tooling not meeting this guarantee.
- (e) Any Buyer-Furnished Items and any Buyer-Funded Items (collectively, "Buyer Items") shall be used only for and in the performance of this Order; provided however, Buyer Items classified as durable tooling or special tooling (as such term is defined in the FAR) (collectively "Tooling") may be used for other Buyer requirements under other purchase orders between the Parties. Supplier may not use Government Furnished Tooling that is not provided to Supplier under this Order for performance of this Order unless Supplier has the written permission of Buyer. Without limiting the generality of the foregoing, Supplier shall not use Buyer Items to design, manufacture or repair Goods or any detail of Goods, compare Goods or design of Goods, or obtain FAA Parts Manufacturer Approval or other government approval to manufacture Goods, without Buyer's express written consent.

- (f) Supplier shall not be required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this Order by the processing of material furnished by Buyer; provided, however, that Supplier shall reimburse Buyer at Buyer's prices then current for any such material used by Supplier in excess of the allowance, if any, set forth in this Order.
- (g) Upon completion or termination of this Order or at any time upon Buyer's request, Buyer Items shall be disposed of in accordance with instructions from Buyer.
- (h) Supplier, while Buyer Items are in the custody, care, or control of Supplier, or of its sub-tiers suppliers or carriers (collectively "Supplier's Control"), shall: (i) properly mark/label, identify and segregate Buyer Items to clearly identify them as the property of Buyer or Buyer's customer, as the case may be, at all stages of its possession, (ii) prevent the commingling of Buyer Items with other material except in accordance with applicable Buyer specifications or Buyer's written approval, and (iii) be responsible for all taxes on Buyer Items, (iv) properly store Buyer Items to a commercially reasonable standard, including keeping it free of rust, oxidation and other contamination and in a condition to manufacture parts in accordance with applicable specifications, (v) not make any modifications to Tooling or scrap and Buyer Items without prior written approval of Buyer and (vi) be responsible to provide confirmation of the foregoing, including, a schedule of all quantities on hand of Buyer Items, as requested by Buyer.
- (i) Supplier, while Tooling is in Supplier's Control, shall, at its own expense, establish and follow a maintenance and repair program for Tooling in order that the Tooling will be in a condition to manufacture parts in accordance with applicable specifications including: (i) replacing missing or damaged pins, cables, bushings, screws, nut, bolts, clamps, jack screws, washers, vacuum bags, caul plates, locators, form block backing plates, and miscellaneous hardware, (ii) repairing mold and bonding fixture and form block surface imperfections, (iii) re-inking and sealing molds, replacing rubber molds for bonding fixtures and (iv) general cleaning, plating, and painting. Supplier shall, at the earliest possible time, shall provide written notice to Buyer of Tooling that requires major refurbishment or replacement and Supplier and Buyer shall negotiate and agree to the terms thereof.
- (j) Supplier assumes all risk of loss or damage to Buyer Items while under Supplier's Control. Supplier shall keep and maintain, and

provide proof upon Buyer's request of, adequate insurance to cover the full replacement cost of Buyer Items and/or Government owned property while under Supplier's Control. Supplier shall deliver immediate notification to Buyer of all Buyer Items and/or Government owned property that is lost, damaged or destroyed (collectively "Lost Property") while under Supplier's Control. Buyer shall direct Supplier in the disposition of Lost Property, with which Seller shall comply at its own expense. Lost Property which is repaired or replaced shall be at Supplier's expense.

- (k) Supplier consents to the filing of a copy of this Order and any applicable attachments or supplements with any cognizant governmental agencies. Supplier shall execute documents reasonably required by Buyer, which are related to the Buyer Items, including, Uniform Commercial Code financing statements, and take other action as Buyer deems appropriate in order to protect Buyer's and Buyer's customers' interests in Buyer Items.
- (l) If Buyer provides Buyer Items for the manufacture of parts or assemblies, Supplier shall not substitute material from any other source nor shall Supplier or its subcontractors alter the Buyer Item's physical or chemical properties except in accordance with applicable Buyer specifications or with Buyer's written approval.
- (m) Supplier shall not transfer, use, copy or duplicate any Buyer-Funded Items, including, special tooling or special test equipment, for any purpose other than performance of this or other Orders for Buyer. Supplier warrants and affirms that it has not used, transferred copied or duplicated any Buyer funded items, special tooling or special test equipment acquired or fabricated under any previous Order for the development or production of particular supplies or parts, or the performance of particular Services required under this Order, for any purpose other than performance of orders for Buyer.
- (n) Buyer may, with five days prior written notice, audit all pertinent books and records of Supplier and its subcontractors, and to make reasonable inspection of Supplier's and its subcontractor's premises, in order to verify compliance with the provisions of this provision.
- (o) The foregoing shall not limit in any manner the measure of damages or other remedies otherwise available to Buyer in the event of a breach of Supplier's obligations under this Order.

**4. Inspection, Acceptance and Rejection**

- (a) Supplier, at its own expense, shall provide and maintain: (i) an inspection system that complies with all Specifications stated in an Order; or (ii) in the absence of such Specifications, an inspection system that is acceptable to Buyer.
- (b) Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and otherwise conform to all requirements of an Order.
- (c) Supplier shall maintain complete inspection records 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, (iv) the latest time required by applicable laws and regulations or (v) the latest time required by ASQR-01 or its then current successor.
- (d) Buyer, the FAA, the governing airworthiness authority or other similar foreign certification agency, the U.S. Government 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 Supplier, Supplier 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. This right of review, whether exercised or not, does not release the Supplier of any of its obligations of testing, inspection quality control and associate documentation.
- (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 provision. Supplier 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 one (1) year following Buyer's receipt of Goods ("Inspection Period").

**Comment [DWF1]:** Page: 7  
Can we call these Articles or pick a common name so we won't run the risk of number changes leading to inconsistencies

- (g) During the Inspection Period, Buyer, in its absolute discretion, shall have the following rights with respect to any lot of Goods that does not conform in any respect to this Order including, without limitation, all drawings and Specifications:
  - i. Reject such Goods
  - ii. Accept such Goods with a price reduction for the cost of repair or the diminution of value, or
  - iii. Accept any conforming Goods and reject the rest.
- (h) With respect to rejected Goods Buyer may, in its absolute discretion, either: (i) hold them with reasonable care for Supplier, or (ii) return them to Supplier for, at Buyer's option, full credit or refund. Returns shall be at Supplier's risk and expense, transportation collect and declared at full value unless Supplier immediately provides other commercially reasonable written instructions.
- (i) The rejected Goods returned to Supplier shall not be replaced by Supplier except upon written instructions from Buyer. Rejected Goods shall not be tendered again to Buyer for acceptance unless: (a) permitted by applicable law, and (b) accompanied by a disclosure of prior rejection(s). If required by applicable Quality procedures, rejected Goods that are not re-tendered shall be mutilated and/or destroyed in compliance with such procedures.
- (j) With respect to nonconforming Goods that are accepted, Buyer may, in its absolute discretion, elect to have the nonconforming Goods repaired at Supplier's expense, or setoff against Supplier 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 Supplier.
- (k) Upon Buyer's notification of any nonconformity in Goods, Supplier shall:
  - i. within thirty (30) Days from Buyer's notice, fully investigate the nonconformity and its root causes, deliver to Buyer a written report of its investigation and its conclusions as to the root causes, and meet with Buyer to formulate a corrective action plan, and

- ii. within thirty (30) days after providing Buyer the results of Supplier's investigation, implement the corrective action plan, including any corrective action recommended by the Buyer, and eliminate the root cause of the nonconformity
- (l) Buyer may, at any time, direct Supplier to deliver known nonconforming Goods, which Goods shall be corrected, prior to shipment, in accordance with Buyer's instructions. For Goods already delivered, Buyer shall make an equitable price reduction for each commercial unit of the Goods pending completion of the corrective action. Buyer's direction to Supplier to deliver nonconforming Goods shall not be deemed a waiver of Buyer's rights under this provision or an "acceptance" of such Goods for the purpose of this provision.
- (m) Title to Goods delivered to Buyer shall not vest in Buyer and shall remain with Supplier until Buyer's acceptance after a receiving inspection at Buyer's facility.
- (n) Acceptance of Goods or Services shall not be deemed to diminish Buyer's rights under any other provision including the Warranty provision or be final or binding on Buyer if latent defects, fraud, or gross mistakes amounting to fraud on the part of Supplier or Supplier's subcontractors exists.

**5. Warranty**

- (a) Goods: Supplier warrants to Buyer, its successors, assigns, customers and users of Goods sold by Buyer that all Goods provided hereunder or serviced hereunder shall be: (i) merchantable and fit for the purpose intended, (ii) new (unless specifically agreed to in writing), (iii) free from defects in material and workmanship, (iv) with regard to any elements of design supplied by Supplier, free from defects in design, (v) in compliance with all applicable Specifications, drawings, and performance requirements and (vi) free from security interests, liens or encumbrances and of good title. This representation and warranty is in addition to any other representations and warranties in this Order.
- (b) Services: Supplier warrants to Buyer that any Services or technical data provided by Supplier under this Order (i) have been performed or prepared in a professional and workmanlike manner by personnel who are adequately, trained, supervised and experienced and according to best industry standards and practices, (ii) are suitable for the purposes intended whether

expressed or implied, and (iii) are in compliance with all applicable specifications and performance requirements.

- (c) Delivery, inspection, test, acceptance or use of or payment for the Goods and Services furnished hereunder shall not affect Supplier's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment and use.
- (d) Buyer shall notify Supplier in a commercially reasonable time of a breach of Warranty ("Notice"), and may return ship the Goods on the fastest available commercial carrier and Supplier shall bear the risk of loss and pay all freight costs.
- (e) Buyer retains all its rights at law and in equity for Supplier's breach of warranty. In addition to any other available remedies, Buyer may require Supplier to promptly repair, or replace, any goods which breach the Warranty. Deliveries of corrected or replaced Goods or Services shall be accomplished promptly and shall be accompanied by written notice specifying that such goods or Services are corrected, repaired or replaced. Buyer's remedies with respect to this warranty shall not be limited, restricted or disclaimed in whole or part by any other provision of this Order.
- (f) Warranty services shall, to the greatest extent possible, be performed at the locations directed by Buyer. If Goods must be shipped to Supplier for warranty services, Buyer may return ship the Goods on the fastest available commercial carrier and Supplier shall bear the risk of loss and pay all freight costs.
- (g) While Buyer may have available to it contractual or other limitations with respect to its own customers, Buyer may in some instances decide, in its reasonable judgment, to provide corrective Goods and/or Services, and/or reimburse such customers for quality issues, losses and for damages beyond Buyer's strict contractual or legal obligations. Where such corrective action payments and/or expenses by Buyer result from or are related to defects or failures by Supplier in Supplier's Goods and/or Services, Buyer may recover for such corrective action, payment and/or expenses from Supplier.

**6. Indemnification**

- (a) Supplier shall indemnify, protect, and hold harmless Buyer, its officers, directors, employees and agents ("Indemnified Person") from any and every liability, claim of liability, allegation, judgment,

cost, expense, reasonable attorneys fees, cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Supplier's performance under this Order, howsoever arising, unless caused by the sole negligence of the Indemnified Person. In the event Buyer should bring an action for enforcement of this indemnification provision, Supplier agrees that Buyer shall be entitled to be awarded its reasonable attorneys' fees and costs if Buyer prevails in such proceeding.

- (b) Supplier agrees, in any instance where any claims, suits, actions or legal proceedings are brought against the Supplier and in any way affect Buyer's interests under this Order or otherwise, that:
  - i. Supplier shall notify Buyer in a timely manner (not to exceed five (5) business days) after learning of any actual or threatened claims, suits, actions or legal proceedings, and shall not at any time consummate any settlement without Buyer's prior written consent;
  - ii. Without releasing any obligation, liability or undertaking of Supplier to indemnify Buyer hereunder, Buyer shall have the right to cooperate in the defense of such claim and, with the permission of the court, intervene in any such action and/or supersede Supplier in the defense of any such claim.

**7. Price Warranty**

Supplier warrants that the prices for the Goods sold or Services provided to Buyer are not higher than those extended to any other customer for the same or similar Goods or Services in similar quantities. If Supplier violates this warranty Supplier shall retroactively reduce the prices hereof correspondingly. Supplier shall also provide Goods and Services at the prices set forth in this Order to Buyer's subsidiaries, affiliates and subcontractors.

**8. Invoicing and Shipping Instructions**

Invoicing, shipping, packing and waste reduction instructions shall be included in the Order either through an attachment, printing on the face sheet of the Order, or incorporation by Reference of a document resident on a web site

**9. Inspection of Records**

In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer may inspect and audit, on reasonable notice, Supplier's books, records and its plant, or such parts of its plant as may be engaged in the performance of this Order, if this Order: (a) is a time and material order, (b) is a cost based order, or (c) provides for advance or progress payments based on costs incurred by Supplier.

**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, changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer-furnished property, facilities, equipment, materials, or Services and/or (vii) quality requirements. Supplier shall perform any changes ordered by Buyer ("Change(s)"). 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) Changes shall only be binding on Buyer if issued in writing by an authorized representative of Buyer's purchasing department. Buyer's engineering and technical personnel are not authorized to order Changes, including Changes to drawings, designs, or specifications
- (c) If any Change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and the Order shall be modified in writing accordingly. Any claim by Supplier 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 Supplier of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Supplier's request; provided, however, that Buyer may in its discretion consider any such claim regardless of when asserted, except that 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 Supplier's Adjustment Claim, Buyer shall have the right to prescribe the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of this Order, as directed by Buyer. Nothing herein shall be construed as relieving Supplier of its duty to perform, including the failure of the Parties to resolve an Adjustment Claim. Buyer shall pay to Supplier in accordance with the terms of this Order all sums not in dispute pending resolution of an Adjustment Claim. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to setoff and withholding.

**11. Compliance with Laws**

- (a) Supplier 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; and Supplier shall hold Buyer harmless from and against any and all liability due to the Supplier's failure to so comply.
- (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) Supplier shall at the earliest practicable time notify in writing, and meet with, Buyer if Supplier is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or (ii) listed or is proposed to be listed by the

U.S. Government in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist" for U.S. export administration purposes (collectively, "Debarment"). Supplier shall indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of Supplier's Debarment.

**12. Export Control**

- (a) Supplier shall comply with the most current export control and sanctions laws, regulations, and orders applicable at the time of the export and/or any re-export of Goods or Services including, without limitation, the i) United States Export Administration Regulations ("EAR"), ii) International Traffic in Arms Regulations ("ITAR"), iii) regulations and orders administered by the Treasury Department's Office of Foreign Assets Control and iv) laws and regulations of other countries (collectively, "Export Control Laws").
- (b) Supplier shall notify Buyer of any Goods or Services that are controlled by the ITAR ("ITAR Items") and shall, upon request, provide Buyer with the applicable Export Control Classification Numbers ("ECCNs") of Goods or Services, as well as the ECCNs of any components or parts thereof (collectively "Components") if the Component ECCNs are different from the ECCN of the Goods or Services. To the extent that such Goods, Services or Components were specifically designed, developed, configured, adapted or modified for a military application, Supplier shall notify Buyer of this fact and shall provide Buyer with written confirmation from the United States Department of State that such Items are not subject to the jurisdiction of the ITAR.
- (c) For Goods and Services not identified as required above, Supplier represents that (i) the Services, 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. Supplier acknowledges that this representation means that an official capable of binding the Supplier knows or has otherwise determined that the Goods, Services and Components, are not on the U.S. Munitions List at 22 C.F.R. §121.1 of the ITAR. Supplier shall provide Buyer, upon Buyer's reasonable request, with any documentation and other information that supports or confirms this representation
- (d) If Seller is engaged in the United States in the business of either exporting, manufacturing or brokering ITAR Items, Seller represents that it is registered with the Directorate of Defense

Trade Controls (“DDTC”), as may be required by 22 C.F.R. 122.1 of the ITAR and that it maintains an effective export/import compliance program in accordance with DDTC guidelines.

- (e) Supplier acknowledges that any technical data furnished by Buyer in connection with this Order may be subject to Export Control Laws. In regard to United States Export Controls, Supplier shall not export, re-export or re-transfer technical data controlled by Export Control Laws (“Technical Data”), and shall not disclose Technical Data to any foreign persons or foreign commercial entities, including employees, consultants, subcontractors, vendors or suppliers, unless Supplier receives advance, written confirmation from Buyer that such export, re-export or re-transfer complies with Export Control Laws. Supplier shall also abide by any restrictions contained in any of Buyer’s export licenses pertinent to Supplier’s export or re-export of technical data. Technical Data provided to Supplier in connection with this Order is to be utilized only for the manufacture of the articles required by this Order. The transfer or disclosure of the data to any other foreign person or to Supplier’s employees who are citizens or dual citizens of a country other than the country in which Supplier is performing the Order, is prohibited without Buyer’s advance, written authorization. The acquisition of any rights in Technical Data by any foreign person is prohibited. Any subcontracts between foreign persons in the approved country for manufacture of Goods, or provision of Services, shall contain all the limitations of this paragraph. Upon completion of its performance under this Order, Supplier and its subcontractors shall destroy or return to the Buyer all Technical Data.
- (f) Delivery of any ITAR Items shall only be made to the Buyer in the United States, to an agency of the U.S. Government or as otherwise authorized under Buyer’s export licenses as Buyer may direct. Compliance with export laws and regulations (including license application requirements, delays thereof, or revocation or non-renewal of licenses) does not relieve Supplier of its obligations under any other terms and conditions of this Order and shall not constitute a *force majeure* or give rise to an excusable delay hereunder.

**13. Insurance**

- (a) Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed under this Order:
  - i. Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient

by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence;

- ii. Commercial General Liability Insurance including Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a Combined Single Limit of \$5,000,000 for any one occurrence. If the Supplier carries a higher limit of liability, the higher limit must be certified to Buyer;
  - iii. If Supplier vehicles are used on Buyer's premises and/or used to accomplish work under this order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence. If the Supplier carries a higher limit of liability, the higher limit must be certified to Buyer;
  - iv. If Supplier or its subcontractors have Buyer's materials or equipment in its care, custody or control, Supplier shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material;
  - v. If Supplier is performing Professional Services on behalf of Buyer, Supplier shall maintain Professional Liability Insurance with a limit of no less than \$5,000,000;
- (b) The following shall apply if Supplier is providing product, component parts, materials or work to be incorporated in aircraft where such products, parts or materials are classified as Flight Safety Parts (FSP) or its equivalent or having Critical Characteristics (CC) or its equivalent in accordance with the current revision of ASQR-01, ASQR-09.1 and/or any documents referenced therein:
- i. Supplier shall maintain Aircraft Product Liability, Completed Operations Liability and Hangarkeepers Liability Insurance coverage in a minimum amount of Combined Single Limit of \$50,000,000 for any one occurrence and in the aggregate where applicable,

including AV52 Coverage. In the event Supplier carries higher limits of liability, the higher limits of liability must be certified to Buyer.

- ii. All such insurance shall be issued by companies authorized to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed, and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- (c) The insurance coverages described above shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least ten (10) days' (seven (7) days in the case of War Risks Insurance) prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Supplier's performance of work and shall operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by Buyer. Certified copies of said policies or certificates evidencing such insurance and endorsements naming UTC and the Buyer as an additional insured or, in the case of All Risk Property Insurance, naming UTC and the Buyer as a loss payee, shall be filed with Buyer upon execution of the Agreement and before commencement of any work hereunder, and within thirty (30) days after any renewals or changes to such policies are issued. To the extent permitted by law, Supplier and its insurer(s) agree that subrogation rights against UTC and the Buyer are hereby waived. Supplier shall reflect such waiver in any policy(ies) required under this agreement and shall advise the amount of available policy limits as of execution of this contract and shall identify the amounts of any self-insured retention.
- (d) The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by supplier, its employees, invitees or agents under the Order and that such insurance shall not be invalidated by any act or neglect of the supplier whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.
- (e) Supplier agrees to insert the applicable substance of this provision in all subcontracts entered into by Supplier to support work performed under this Order.

**14. Delays**

Supplier shall be liable for its failure or delay in making deliveries except when such failure or delay is due to a cause beyond the control and without the fault or negligence of Supplier, provided that Supplier gives to Buyer prompt notice in writing when it appears that such cause will result in failure or delay in making deliveries under this Order. In the event of any such failure or delay, Buyer shall have the right, at its option and without being under any liability to Supplier, to cancel this Order (in whole or part) by notice in writing to Supplier. Correspondingly, Buyer shall be excused for failure or delay in performance herein due to any cause beyond its control, including any cause of its customers.

**15. Termination for Default**

- (a) Buyer may by written notice terminate the entire Order, or any part thereof, and, if the Order is issued under an Agreement, the entire Agreement, or any part thereof, for default in the following circumstances:
  - i. Supplier fails to deliver any of the Goods or perform any of the Services required by this Order within the time specified herein, or any extension thereof granted by Buyer in writing; or
  - ii. Supplier fails to i) perform any of the other provisions of this Order or ii) make progress sufficient to assure Buyer that it will perform this Order in accordance with its terms and b) Supplier does not i) cure, or ii) where a cure is not immediately possible, submit to Buyer a plan, reasonably acceptable to Buyer, to cure such failure within a period of ten (10) days after receipt of notice from Buyer specifying such failure, provided, however, that if a cure plan is approved by Buyer, Supplier's failure of performance thereunder shall be deemed a default under, and Buyer may terminate, this Order,
  - iii. Supplier consents to the appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator or similar official with respect to all or a substantial part of its property, or Supplier admits in writing its inability to pay its debts generally as they come due, or makes an assignment of all or part of its property for the benefit of creditors; or

- iv. Supplier files a voluntary petition under any bankruptcy or insolvency law or takes any other action to initiate such a proceeding, or an involuntary petition is filed or proceeding commenced against Supplier under any bankruptcy or insolvency law; or
  - v. An order, judgment or decree is entered in any proceeding by any court appointing, with or without the consent of Supplier, a receiver, trustee, liquidator, assignee, sequestrator or similar official with respect to all or any substantial part of Supplier's property, or sequestering all or any substantial part of Supplier's property, and such order, judgment or decree remains in for a period of ten (10) days; or
- (b) Whether or not Buyer elects to terminate this Order and/or Agreement entirely or partially as a result of a default specified above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those so terminated, and Buyer may take such other action as it deems commercially reasonable under the circumstances, and Supplier shall be liable to Buyer for any and all damages incurred by Buyer as a result of Supplier's default, including reprourement costs for such similar goods or services, including any price for such similar goods or services that is higher than this Order. If this Order is partially terminated, Supplier shall continue the performance of this Order to the extent not terminated. In the case of termination pursuant to subsection (a)(i) or (a)(ii) above, Supplier shall not be liable for such additional costs if Supplier's failure to perform this Order:
- i. arises out of causes beyond the control and without the fault or negligence of Supplier. Such causes may include, but are not restricted to, 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
  - ii. is caused by the default of a vendor or subcontractor to Supplier, so long as such default arises out of causes beyond the control of both the Supplier and the vendor or subcontractor, and the subcontracted goods or services were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedule.

No cause shall constitute a basis for excusable delay unless Supplier has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

- (c) If this Order is entirely or partially terminated under this section, Buyer, in addition to any other rights, may require Supplier to:
  - i. transfer title and deliver to Buyer in the manner and to the extent directed by Buyer any completed Goods and any partially completed Goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "Contract Materials") as the Supplier has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated; and/or
  - ii. protect and preserve property in the possession of Supplier in which Buyer has an interest.
- (d) Payment for completed Goods delivered or rendered to and accepted by Buyer after the partial or entire termination of this Order shall be in an amount agreed upon by Supplier and Buyer but Supplier shall not withhold such Goods or fail to perform any other obligation to Buyer as a result of the failure of Supplier and Buyer to agree on such amount. Buyer may withhold from amounts otherwise due Supplier for such completed Goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims or for any other reason.
- (e) If Supplier is unable to meet the Delivery Dates for any reason, including an excusable delay, or if this Order is terminated for default under this provision, upon written notice from Buyer, Supplier shall immediately provide transition assistance services and deliver to Buyer:
  - i. all data (including manufacturing know-how) utilized by Supplier in performing this Order;
  - ii. tools and test equipment necessary to manufacture and test the Goods; and
  - iii. a worldwide non-exclusive royalty-free irrevocable license under any of Supplier'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.

- iv. In the case of a default termination, there shall be no charge to Buyer for any data, licenses, equipment and services. In the case of an excusable delay, the Parties shall negotiate in good faith the terms for the provision of these items.
- (f) If, after notice of termination under this section, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."

**16. Termination for Convenience**

- (a) Buyer may terminate performance of work under this contract in whole or, from time to time, in part if Buyer determines that a termination is in Buyer's interest. Buyer shall terminate by delivering to Supplier a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by Buyer, Supplier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - i. Stop work as specified in the notice.
  - ii. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - iii. Terminate all subcontracts to the extent they relate to the work terminated.
  - iv. Assign to Buyer, as directed by Buyer, all right, title, and interest of Supplier under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - v. With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination

settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

- vi. As directed by Buyer, transfer title and deliver to Buyer –
  - (1) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - (2) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Buyer.
- vii. Complete performance of the work not terminated.
- viii. Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this contract that is in the possession of Supplier and in which Buyer has or may acquire an interest.
- ix. Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that Supplier
  - (1) is not required to extend credit to any purchaser and
  - (2) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer.

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

- (c) After termination, Supplier shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The proposal shall only include the amounts designated under Paragraph (e). Supplier shall submit the proposal promptly, but no later than 3 months from the effective date of termination, unless extended in writing by Buyer upon written request of Supplier within this 3-month period. However, if

Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 3 months or any extension. If Supplier fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Supplier because of the termination and shall pay the amount determined.

- (d) Subject to paragraph (c) of this clause, Supplier and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause may not exceed the total contract price as reduced by
  - i. the amount of payments previously made and
  - ii. the contract price of work not terminated.

The contract shall be modified, and Supplier paid the agreed amount.

- (e) If Supplier and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay Supplier the amounts determined by Buyer as follows, but without duplication of any amounts agreed on under paragraph (d) of this clause:
  - i. the contract price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
  - ii. the actual costs incurred by Supplier and its subcontractors directly in the performance of the work terminated, excluding initial costs and preparatory expense allocable thereto, other non-recurring costs and any costs attributable to supplies or services paid or to be paid under subparagraph (e)(1) of this clause;
- (f) In arriving at the amount due Supplier under this clause, there shall be deducted –
  - i. All unliquidated advance or other payments to Supplier under the terminated portion of this contract;
  - ii. Any claim which Buyer or any of its affiliates has against Supplier; and

- iii. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Supplier or sold under the provisions of this clause and not recovered by or credited to Buyer.
- (g) Unless otherwise provided in this contract or by statute, Supplier shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on Supplier's costs and expenses under this contract. Supplier shall make these records and documents available to Buyer and Buyer's accountants, at Supplier's office, at all reasonable times, without any charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- (h) Notwithstanding any other provisions in this termination for convenience clause, unless otherwise expressly agreed in writing, Buyer shall not be liable for any Supplier termination charges associated with the costs applicable to any terminated parts not required to be delivered within the Lead Time Period unless a previous Buyer schedule required delivery within the Lead Time Period and the delivery was pushed out by Buyer. The "Lead Time Period" for each terminated part will commence on receipt of Purchaser's Notice of Termination and end upon the expiration of the lead-time specified to a part. If no lead-time is specified for a part, the lead-time will be a reasonable average actual lead-time under normal delivery circumstances.
- (i) The amount to be paid under this provision shall be subject to any limitations or defined amounts agreed to in the Agreement or any Order.

17. **Stop Work Order**

- (a) Buyer may, at any time, by written order to Supplier, require the Supplier to stop all, or any part, of the work called for by this Order for a period of 120 days after the order is delivered to the Supplier, and for any further period to which the parties may agree. Upon receipt of the order, the Supplier shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 120 days after a stop-work is delivered to the Supplier, or within any extension of that period to which the parties shall have agreed, the Buyer shall either-

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- i. Cancel the stop-work order; or
  - ii. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled, the Supplier shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- i. The stop-work order results in an increase in the time required for, or in the Supplier's cost properly allocable to, the performance of any part of this contract; and
  - ii. The Supplier asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) If Buyer gives takes neither of the actions described in (a) above by the end of the stop-work order period, Supplier shall not proceed with the work and shall make an inquiry of Buyer as to whether or not to proceed.

**18. Duty to Proceed**

Supplier shall proceed diligently with the performance of this Order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to this Order shall excuse the Seller from proceeding. During the pendency of any dispute, Buyer shall continue to pay in accordance with this Order for Supplier's performance related to matters not in dispute. Notwithstanding

the generality of the foregoing, Buyer shall retain its rights with respect to setoff and withholding.

19. **Partial Invalidity/Unenforceability**

If in any instance 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.

20. **Survival**

Supplier agrees that provisions that relate to records and Buyer's right to inspect records, warranties, indemnifications, compliance with laws, intellectual property (including protection of proprietary information) and offset obligations shall survive the expiration or other termination of the agreement of which these provisions are made a part.

21. **No Waiver**

Buyer's failure to seek a remedy for any breach by Supplier or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type

22. **Dispute Resolution**

- (a) Prior to either party initiating litigation, the parties shall follow the following process for the resolution of disputes:
  - (a) Upon the written request of a party to have an informal dispute resolution, each party shall, within five (5) calendar days of the date that such written request is received by the non-requesting party, designate a representative who will be responsible for communicating, producing documents and negotiating for the purpose of resolving such dispute. The representatives shall negotiate in good faith in an effort to resolve the dispute.
  - a. During the course of negotiations, all reasonable requests made by one party to another for information that is not privileged, proprietary, or otherwise confidential and is reasonably related to the dispute, will be promptly honored.

- b. The specific format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of written and/or oral statements of fact, statements of position and/or offers of settlement. The parties acknowledge that any such statements or offers will be prepared in connection with settlement negotiations, and as such will be privileged and shall not be used in any subsequent proceedings, whether related to the dispute or not, against the party who prepared such statement or offer unless it is subsequently introduced by the preparing party in a subsequent proceeding. No such written and/or oral statements or offers of settlement shall constitute an admission or waiver of rights by either party in any proceedings. At the request of either party, all such written statements or offers of settlement, and all copies thereof, shall be promptly returned to the party who provided the same.
  - c. Should the designated representatives fail to reach agreement within thirty (30) calendar days of receipt of the written request by the non-requesting party (or such longer period as such representatives may agree in writing), then upon the written request of either party, a vice president of each party shall attempt to resolve the issue within thirty (30) calendar days of receipt of the written request by the non-requesting party.
- (b) Notwithstanding any other provision of this section/paragraph, either party may resort to court action for injunctive (or other) relief at any time if the dispute resolution processes set forth in this clause would permit or otherwise cause irreparable injury to such party or any third party claiming against such party, due to delay arising out of the dispute resolution process.
  - (c) Each party shall continue performing its obligations under this agreement while any dispute is being resolved. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in the agreement.
  - (d) This section/paragraph shall not be construed to prevent a party from instituting, and each party is authorized to institute, formal proceedings prior to the completion of the parties' obligations under this section/paragraph in order to avoid the expiration of any

applicable limitations period, or to preserve a superior position with respect to other creditors.

**23. Attorney Fees**

If Buyer brings an action or asserts a counterclaim for enforcement of the terms and conditions of this Order, Supplier agrees that Buyer shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement or counterclaim 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 Connecticut, USA (Province of Quebec for Orders from Pratt & Whitney Canada) without regard to conflicts of law principles. Services shall be deemed to be goods for the purposes of this paragraph (i.e., the application of governing law). Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this Order in the appropriate court in the jurisdiction described above, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. Notwithstanding the foregoing, if Buyer in good faith determines that enforcement of a judgment granted by a Connecticut court would not be given full faith and credit by a court in a jurisdiction where enforcement may be sought, Buyer may bring the action in that jurisdiction under Connecticut law.
- (b) Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described in (a) above, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in Connecticut (Province of Quebec for Orders from Pratt & Whitney Canada).
- (c) The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

**25. Remedies**

Subject to any specific provisions in the Agreement, the Order or herein, Supplier shall be liable for any damages incurred by Buyer as a result of Supplier's failure to perform its obligations in the manner required by this Agreement. 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) Any release of information relating to this Order, including news releases, articles, brochures, advertisements, speeches, etc., requires written permission of Buyer and will include acknowledgment of Government sponsorship where applicable. The Supplier further agrees to include this provision in any subcontract awarded as a result of this Order.
- (b) Supplier shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Supplier has contracted to furnish Buyer the Goods or Services ordered by Buyer, or use any trademarks or trade names of Buyer in Supplier's advertising or promotional materials. In the event of Supplier's breach of this provision, Buyer shall, in addition to other available remedies, have the right to cancel the undelivered portion of any Goods or Services ordered by Buyer and, further, Buyer shall not be required to make further payments to Supplier except for conforming Goods delivered or Services rendered prior to Buyer's cancellation as herein provided.

**27. Interpretation and Order of Precedence**

- (a) In the event that these Terms and Conditions are referenced in an Agreement, the order of precedence clause of that Agreement, if any, shall prevail over this clause.
- (b) Any inconsistency or conflict in the provisions applicable to this Order shall be resolved by giving precedence in the following order:
  - i. The provisions of the Order or Release including the price, price adjustment terms, specifications, drawings, work statements and specifically included modifications of the Agreement and these Terms and Conditions of Purchase (however, if such changes would alter the liability or warranty aspects of these Terms and Conditions of Purchase, such changes will be null and void unless their

acceptance is signed by an attorney in Buyer's legal department);

- ii. Terms of any Agreement incorporated by reference into the Order or under which the Order is issued;
  - iii. These Terms and Conditions of Purchase;
- (c) Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of provisions to which such captions refer.

28. **Toxic, Hazardous or Carcinogenic Substances**

- (a) Supplier represents and warrants that
- i. the Goods, and substances contained therein including parts, subparts, components, and chemical constituents,
  - ii. substances used in the manufacture of the Goods, including parts, subparts, components and chemical constituents;
  - iii. use of the Goods in the manner intended, and
  - iv. substances required for the maintenance of the Goods provided under this Order

are not prohibited by any laws or regulations of any country or other jurisdiction in the world, including:

- (1) The United States through a Department or Agency such as the Environmental Protection Agency acting under the Toxic Substances Control Act (15 U.S.C., § 2601 et seq.) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 121 et seq.) or any other statute or regulation;
- (2) Individual states in the U.S.;
- (3) The European Community through European Communion Council Directive of 27 July 1976 "on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing

and use of certain dangerous substances and preparations" (76/769/EEC) and other Directives;

- (4) Nations in the European Community that have implemented legislation concerning 76/769/EEC and other Directives;
- (5) Nations that are not in the European Community but which implement legislation similar to 76/769/EEC and other Directives;

(b) Supplier represents and warrants that:

- i. each chemical substance, including chemicals substances contained in the Goods delivered under this Order, is on the Inventory List (see 40 C.F.R. § 710) published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C . § 2601 et seq.) at the time of such delivery.
- ii. delivery of any Goods, including their chemical constituents, under this Order shall be made in accordance with transportation, labeling and other requirements enacted by any government or regulatory body anywhere in the world, and
- iii. the Goods, including their chemical constituents, shall meet the environmental, health and safety requirements of all jurisdictions such that Buyer may freely transport, export, import, use, maintain, market and sell the product or article throughout the world. Where there is regulation or restriction pertaining to the Product, Supplier shall a) inform Buyer of such regulations or restrictions in writing, specifying the jurisdictions in which the Product is regulated, b) provide Buyer with a written copy of the appropriate compliance recommendations on handling or use and c) obtain Buyer's written approval for the deliver of any Goods that are regulated or restricted.

(c) If Supplier provides Goods under this Order which: 1) contains a toxic or hazardous substance as identified under Occupational Safety and Health Standards, 29 C.F.R. § 1910.20 or 29 C.F.R. § 1910.1000 et. seq. (Subpart Z), or 2) is a carcinogenic substance, or 3) the use of is regulated or restricted under 76/769/EEC or other European Community Directive, Supplier shall provide Buyer with a

Material Safety Data Sheet (meeting the requirements of 29 C.F.R. § 1910.1200(g) and the latest revision of Federal Standard No 313), that shall include information on the presence of all chemical substances in the product, including concentrations of chemicals equal to or greater than 0.1% and any other information required by any applicable law. This information shall be provided with the initial shipment of the product. When a change in formulation occurs supplier shall label each container or such products in a clearly legible and conspicuous form, stating that a toxic or hazardous substance is contained therein, and providing Buyer with a copy of any existing or new restrictions on handling or use.

29. **Design and Process Specification Efforts** (The following provisions are applicable when (i) Supplier is designing new parts for Buyer, (ii) Supplier is developing new specifications for Buyer, or (iii) Supplier is creating new work instructions, assembly instructions, repair instructions or required processes for Buyer.)
- (a) Supplier shall submit a written Material of Concern ("MOC") Report (in the format provided by Buyer) to the representative whom Buyer designates to receive its MOC Reports. The list of MOCs is attached hereto entitled "Materials of Concern". The written MOC Report shall be submitted prior to Buyer's Preliminary Design Review and again prior to Buyer's Critical Design Review (or, if there are no such Reviews, concurrent with Supplier's submission of the applicable drawings, specifications and/or instructions). The MOC Report shall give full details regarding the intended use of the MOC. Supplier shall cooperate with Buyer to consider other alternative materials as discussed at design reviews.
  - (b) Supplier's report shall include all uses of all MOC (i) as a constituent of the materials specified by Supplier for parts, components, part details, end items, coatings or any other article furnished by Supplier under this Agreement or (ii) as a material or chemical required to be utilized in accordance with Supplier's process instructions specified on Supplier's engineering drawings, or (iii) as a material or a chemical required to be utilized in assembly instructions, repair instructions, maintenance instructions or other use instructions that Supplier is to develop and deliver under this Agreement.
  - (c) Military or industry standard electrical components are exempt from the requirements of this clause.

30. **Ozone Depleting Substances**

Supplier agrees that the Goods delivered hereunder shall be accurately labeled in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated thereunder, including but not limited to requirements contained in 40 C.F.R. §§ 82.114 and 82.116. At Buyer's request, Supplier shall certify in a form satisfactory to Buyer whether the Goods were manufactured with a controlled substance, as defined in 40 C.F.R. § 82.104.

31. **Electrostatic Discharge Control Requirements:**

Suppliers of electrical and electronic parts, assemblies and equipment, hereinafter referred to as "Parts", shall determine if any Parts supplied to Buyer are electrostatic discharge (ESD) sensitive and if so, the following conditions shall apply: (i) Suppliers of ESD sensitive electrical and electronic Parts shall design, manufacture, test, and repair these Parts using good commercial ESD control practices; (ii) electrical and electronic Parts supplied to Buyer that are susceptible to ESD damage as delivered shall be properly handled and packaged to prevent ESD damage; and (iii) packages containing electrostatic discharge sensitive (ESDS) parts shall be marked with an appropriate caution label.

32. **Report on Non-US Sources**

Upon Buyer's request the Supplier 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.

33. **Offset**

- (a) Buyer may be required by its customers to fulfill offset and other industrial cooperation obligations in specific countries. These obligations may take the form of technology transfer, purchase of components or services, technical and export assistance or other business transactions.
- (b) Supplier acknowledges Buyer's exclusive rights in and to any offset credit that is generated as a result of this Order and any subsequent subcontracting by the Supplier to fulfill this Order. Buyer may use all or any part of the value of this Order, including the value of subcontracts placed by the Supplier for this Order, for

satisfying offset obligations of Buyer, Buyer's affiliates or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by this Order or the subcontracting of this Order only upon the receipt of written approval from the Buyer.

- (c) Supplier shall also support Buyer, in any manner reasonably requested by Buyer, and at no additional cost to Buyer, in meeting Buyer's offset requirements in the amounts and in the countries specified by Buyer. The amount of the support shall not exceed the proportion of the offset obligation that is the ratio of the value of the component or system supplied by Supplier to the value of the end item sold by Buyer into the particular country. Supplier shall furnish upon request any certificates or other documents reasonably required by Buyer in fulfillment of Buyer's offset obligations, including, any documents transferring title to the offset credits to Buyer, any documents perfecting any rights granted to Buyer in this Article, and Uniform Commercial Code financing statements; and take other action as Buyer deems appropriate in order to protect Buyer's interests in offset credits.
- (d) If Supplier fails to satisfy its obligations under paragraph (b) or (c) above then Buyer may, in addition to any other rights and recourses it may have at law or pursuant to any agreement with Supplier, require Supplier to either: (i) compensate Buyer for additional costs or penalties incurred by Buyer due to Supplier's failure; or (ii) participate to an equivalent value in offset activities of Buyer or of any UTC affiliate or division in another country identified by Buyer.

**34. Assignment, Setoff and Withholding**

- (a) Upon written notice to the Supplier, Buyer may assign any Order or Release or any interest thereunder, without recourse, to any subsidiary or affiliate of Buyer or to any entity that acquires Buyer or any subsidiary or affiliate of Buyer or, in each instance, substantially all of their assets, and Supplier hereby consents to any such assignment without further action by Buyer or Supplier.
- (b) Performance of this Order shall not be assigned by the Supplier in whole or in part without the prior written consent of Buyer. Any assignment by Supplier in whole or in part without the prior written consent of Buyer shall be null and void, shall be deemed a material breach of this Order, and Supplier shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder.

- (c) Claims for money due or to become due to Supplier from Buyer arising out of this Order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this Order and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Supplier, a certified copy of the instrument of assignment, and suitable documentary evidence of Supplier's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.
- (d) Buyer, and any affiliate of Buyer, may withhold, deduct and/or setoff all money due, or which may become due, from Buyer, or any affiliate of Buyer, arising out of Supplier's performance under this Order or any other transaction Buyer and its affiliates may have with Supplier.

**35. Intellectual Property Rights**

- (a) "Intellectual Property" means all patents, copyrights, mask works, industrial property rights, trademarks, trade secrets and other rights and information of a similar nature worldwide to the extent that such rights or information are created or made possible by Supplier (alone or acting with Buyer or others) and result from the Supplier's performance under this Order or any Goods or Services provided to Buyer. Such information includes, without limitation, designs, unique processes, drawings, prints, unique specifications, reports, data, and other technical information, regardless of form, and all unique equipment, tools, gauges, patterns, process sheets or work instructions related to such Goods or Services.
- (b) Buyer is licensed to copy, embed in its products and services, sell and distribute such products and services, and use, all software provided under this Order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in this Order, or in a prior written order directed to the software provided hereunder, Buyer's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable copyright laws and regulations, irrespective of any other third party license agreement, including, but not limited to, any license agreement packaged with such software.

- (c) To any extent Buyer does not otherwise have the right(s) to do so, Supplier, on behalf of itself, its employees and any others used by Supplier including subcontractors, hereby grants to Buyer worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable licenses (with rights to grant sublicenses) to make, have made, sell, copy, distribute, display, perform, adapt and use, make derivative works, embed and otherwise freely exploit in any and all media now known or later developed, all materials and other information which Supplier provides or has provided to Buyer either during the term of or prior to the effective date of this Order. Supplier hereby represents and warrants to Buyer that all materials, devices, Services and other information that Supplier uses, copies or adapts hereunder are created originally by Supplier and/or are licensed lawfully to Supplier, with the rights to allow Supplier to comply with this Order
- (d) Supplier shall promptly disclose in writing to Buyer all Intellectual Property produced or first reduced to practice in the performance of this Order. To the extent permissible by law, Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably assigns and hereby agrees to assign to Buyer all right, title and interest to all Intellectual Property, and agrees to do all things reasonably necessary to enable Buyer to secure United States patents, copyrights and any other rights relating to Intellectual Property, including the execution of a specific assignment of title of any Intellectual Property to Buyer and to cooperate with Buyer at Buyer's expense to defend and enforce any such Intellectual Property. Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably waives all "moral rights", all rights of privacy and publicity, and the like, in all materials provided to Buyer. Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of this Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns all right, title, and interest it has to any copyright in such works and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- (e) The tangible and intangible work product developed under this Order, whether or not delivered under this Order, including, but not limited to, all analyses, recommendations, reports, and memoranda, shall become the property of Buyer.

**36. Infringement Indemnity**

- (a) For work performed hereunder or goods or services delivered hereunder, Supplier shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any claim, suit or action, export or import proceeding, alleging that manufacture, export, import, use, sale or offer for sale infringes any patent, trademark, copyright, semiconductor chip product mask work right, other right or misappropriation of information or other violation of an Intellectual Property right; except, however, when such alleged infringement arises as a necessary consequence of Supplier's compliance with specifications or designs furnished by Buyer that describe that aspect of the Goods or Services on which such alleged infringement is based. In such event, Buyer shall save Supplier harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement was derived from, or selected by Supplier.
- (b) The party against whom such infringement claim is made, or such suit or action is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action as such is commenced against the other party. Insofar as its interests are affected 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. Buyer shall have the right to reasonably reject counsel selected by Supplier and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Supplier in determining the strategy to defend any such suit or action.
- (c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Supplier in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event supplier shall be released from its obligation to pay for attorneys fees and court costs. Further, Supplier, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.

**37. Protection of Buyer's Proprietary Information**

- (a) Buyer's Proprietary Information: Supplier agrees that all information on or related to dimensions, materials, software and processes necessary or useful to design, test or define the configuration, life, design features, materials and structural strength or other properties of any of Buyer's products or any components and parts thereof or any processes to manufacture, use, maintain or repair Buyer's products or component parts thereof or to provide services relative thereto, including without limitation:
- i. designs, processes, drawings, prints, specifications, reports, data, software and other technical or business information, whether in a document, computer file or any other tangible form of expression,
  - ii. dimensions, features, materials, markings and tolerances of all parts, equipment, tools, gauges or patterns, other than those which are published by Buyer in manuals, bulletins and other publications which Buyer makes generally available to industry without proprietary limitation, and
  - iii. information in any form bearing Buyer's document property rights notice or any similar legend declaring that the information is the property of or otherwise proprietary to Buyer that Buyer provides or has provided, discloses or has disclosed to Supplier at any time in connection with this Order or prior Orders for the provision of Goods or Services of the type or kind described by this Order,
  - iv. Intellectual Property assigned to Buyer pursuant to the "Intellectual Property Rights" provision of these Terms and Conditions

shall be the exclusive property of Buyer and shall be considered "Buyer's Proprietary Information."

- (b) Receipt and Protection of Buyer's Proprietary Information
- i. Supplier agrees to inspect upon receipt of all information provided to Supplier by or for Buyer and prior to any copying, use, disclosure or transfer of the information, to notify Buyer in writing through Buyer's cognizant Purchasing Department of any such information which Supplier believes is not Buyer's Proprietary Information.

Supplier agrees that failure to provide such notice prior to copying, use, transfer or disclosure of such information shall waive any subsequent claim by Supplier that such information is not required to be treated as Buyer's Proprietary Design Information under this Section.

- ii. Supplier agrees not to receive or accept Buyer's Proprietary Information knowingly from any person, firm, corporation or entity other than Buyer, with the exception of Buyer's Proprietary Information furnished in connection with solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer which expressly reference a Buyer Purchase Order or contain the certification required under this Section, without Buyer's express written consent. Supplier shall promptly notify Buyer if Buyer's Proprietary Information is offered to Supplier by a third party.
- iii. Supplier agrees and promises to keep Buyer's Proprietary Information confidential, and strictly protect it against any use, disclosure or transfer not expressly permitted under this section.
- iv. Supplier promises and agrees to cause all documents and records (including computer or other electronic records) containing or derived in whole or in part from Buyer's Proprietary Information or containing Supplier-developed Buyer's Proprietary Information to bear the following legend:

**WARNING**

**This document is the property of [United Technologies Corporation and/or the United Technologies entity issuing this Order]. You may not possess, use, copy or disclose this document or any information in it, for any purpose, including without limitation to design, manufacture, or repair parts, or obtain FAA or other government approval to do so, without express written permission. Neither receipt nor possession of this document alone, from any source, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of [United Technologies Corporation and/or the**

**United Technologies entity issuing this Order] is not authorized and may result in criminal and/or civil liability.**

- v. Supplier acknowledges that exposure to Buyer's proprietary design information will make it easier for Supplier to manufacture parts that have the same form, fit and function as parts Supplier manufactures for Buyer. As a result, Supplier agrees and promises to notify Buyer in writing through Buyer's cognizant Purchasing Management and to obtain Buyer's written agreement, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function of any parts Supplier manufactures for Buyer (including any replacements or substitutes for any parts Supplier manufactures for Buyer). The written notification shall describe the parts to be manufactured for the other entity and identify the corresponding parts Supplier manufactures for Buyer. The written notification shall also provide Buyer with sufficient information to demonstrate, to Buyer's reasonable satisfaction, that any parts Supplier plans to manufacture for another entity that have the same form, fit and function of any parts Supplier manufactures for Buyer will be manufactured without reference to or use of Buyer's proprietary design information. Supplier agrees that failure to comply with the above requirement shall create a presumption that Supplier is misusing Buyer's proprietary design information and will cause Buyer irreparable harm. If, without obtaining Buyer's written agreement, Supplier manufactures or sells any parts that have the same form, fit and function of any parts Supplier manufactures for Buyer (including any replacements or substitutes for any parts Supplier manufactures for Buyer) to which the presumption described in the immediately preceding clause applies, to anyone other than Buyer (or applies for or assists a third party in obtaining FAA or other government approval for such parts), then Supplier shall be in violation of this Agreement and Buyer shall be entitled to damages (including, but not limited to, injunctive relief and Buyer's lost profits on the manufacture or sale of such parts).
- vi. Supplier agrees and promises that those persons working for or at the direction of Supplier who are exposed to Buyer's Proprietary Design Information for Buyer's parts will have no involvement in the manufacture of parts with

the same form, fit and function for any entity other than Buyer without the prior written approval from Buyer.

(c) Use of Buyer's Proprietary Information

- i. Supplier agrees and promises to use Buyer's Proprietary Information only to perform this Order or other Orders for Buyer, and not to use Buyer's Proprietary Information for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design of a part, or obtain FAA Parts Manufacturer Approval, a supplemental type certificate or other government approval to manufacture or repair a part, without Buyer's express written consent.
- ii. Buyer hereby expressly consents to Supplier's use of Buyer's Proprietary Information to respond to a solicitation from or perform purchase orders for a partner of or higher-tier supplier for Buyer when the solicitation or purchase order expressly references a Buyer Order or contains the following certification:

"Goods or services required are solely for United Technologies Corporation, a subsidiary, division, or affiliate of United Technologies Corporation, or a partner thereof acting pursuant to a Partnership Agreement."
- iii. Buyer further expressly consents to Supplier's use of Pratt & Whitney Proprietary Design Information provided to Supplier by Buyer on or before January 20, 1984, to respond to solicitations from or perform purchase orders for the direct purchase by the U.S. Government of military engine parts. This consent is strictly limited, and does not apply to Pratt & Whitney Proprietary Information which:
  - a. was provided to Supplier by Buyer after January 20, 1984;
  - b. was provided to Supplier at any time by any party other than Buyer; nothing in this Section limits Supplier's right to use Pratt & Whitney design information provided to Supplier lawfully by the U. S. government or a party which obtained the information lawfully from the U. S. Government;

- c. pertains to commercial engine parts; or
- d. is to be used for other than direct U. S. Government military contracts.

Nor does this consent authorize infringement of any Buyer patent or modification of the terms of any Buyer patent license to Supplier; use of Buyer quality assurance of engineering support services in performing a purchase order from any customer other than Buyer or a partner or higher-tier supplier for Buyer; use of Buyer's quality or acceptance symbols or parts sold to any customer other than Buyer or a partner to or higher-tier supplier of Buyer's alteration or consent, or use of any Buyer-supplied raw material, semi-finished or finished parts to perform any purchase order from a customer other than Buyer or a partner to or higher-tier supplier for Buyer.

(d) Disposition of Scrap or Surplus Goods Manufactured Using Buyer's Proprietary Information

Supplier agrees and promises not to 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 by Buyer.

(e) Disclosure or Transfer of Buyer's Proprietary Information

- i. Supplier agrees and promises not to disclose or transfer Buyer's Proprietary Information to any other person, firm, corporation or entity without Buyer's express written consent.
- ii. Buyer hereby expressly consents to Supplier's disclosure or transfer of Buyer's Proprietary Information to its subcontractors or potential subcontractors to the extent strictly necessary to respond to solicitations from or perform this Order for Buyer or purchase orders for a partner of or higher-tier supplier for Buyer as permitted by this Section. Supplier agrees and promises to ensure that any such transfer or disclosure is made under a written solicitation, agreement or subcontract by which the recipient of Buyer's Proprietary Information accepts and is bound by each and every obligation of this Section. Supplier agrees and promises not to transfer or disclose

Buyer's Proprietary Information to any person, firm, corporation or entity for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design a part, or apply for FAA Parts Manufacturer Approval or other government approval to manufacture a part, without Buyer's express written consent.

(f) Disposition of Buyer's Proprietary Information on Completion or Termination

At any time following completion or termination of this Order, Supplier shall, at Supplier's expense, make such disposition of all Buyer's Proprietary Information as Buyer may direct. Without limitation, Supplier of this Section shall remain and continue to be obligated to perform each and every provision, notwithstanding completion or termination of this Order. Absent contrary instructions, Supplier shall destroy all Proprietary Information one year after final delivery under this Order unless required to be kept longer by law or contract or government requirement.

(g) Audit and Inspection

Buyer shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.

(h) Precedence

This provision shall take precedence over those provisions of any agreement between the parties covering the protection of Buyer's Proprietary Information dealt with in this provision.

38. **Covenants Against Kickbacks**

Supplier represents, warrants, covenants and agrees that neither Supplier nor its affiliates nor any subcontractors (including any of their officers or employees) has engaged or will engage in:

- (a) providing, attempting to provide, or offering to provide any kickback (as defined in the Anti-Kickback Act of 1986 or any other applicable national, state or local laws regarding kickbacks or commercial bribery) ("Kickback");
- (b) soliciting, accepting, or attempting to accept any Kickback; or

- (c) including, directly or indirectly, the amount of any Kickback in any invoices or billings submitted under this Order or any other agreement with Buyer or in the subcontract price charged by any subcontractor to a higher-tier subcontractor.

39. **Equal Opportunity and Affirmative Action**

Supplier will comply with the following sections of the Code of Federal Regulations: 41 CFR Ch. 60 ("Executive Order 11246, "VEVRA", Section 503 of the Rehabilitation Act); 48 C.F.R. §52.222-26 ("Equal Opportunity"); 48 C.F.R. §52.222-35 ("Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans"); and 48 C.F.R. §52.222-36 ("Affirmative Action for Workers with Disabilities"), as the same may be amended from time to time, to the extent that such sections are applicable to Supplier's performance under this Order.

40. **Utilization of Disadvantaged, Minority-Owned and Women-Owned Enterprises**

For work performed in the United States, Supplier shall exercise reasonable commercial efforts to use 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 suppliers may be negotiated as part of this Order. Upon request Supplier will provide monthly reports to Buyer detailing small disadvantaged, minority, and women-owned enterprises contracted in support of Supplier's obligations hereunder.

41. **Disaster Recovery**

Suppliers that are: (i) providing Flight Safety parts in accordance with current revision of ASQR-01, ASQR-09.1 and/or any documents referenced therein; (ii) sole source of supply; or (iii) providing products whose lead-time exceeds one hundred twenty (120) days, must develop and maintain a Disaster Recovery Plan. Said plan must include strategy and actions for recovery and continuation of business, related to production of Supplier's products furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of products. Supplier shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

42. **Rules of Construction**

The following rules of construction shall apply to the interpretation of the provisions herein:

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- (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;
- (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) A reference to an provision includes a reference to all sections of that provision;
- (g) A reference to a "dollar", or "\$" means the United States dollar unless otherwise stated
- (h) The word "includes" in any form is not a word of limitation, but of example; and
- (i) 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

**43. Product Support Obligation**

Supplier shall maintain, at its expense, the ability to, and shall, provide Product Support for the Goods until the longer of twenty five (25) years after the last Release is placed by Buyer for Goods or less than 25 aircraft using Goods are in operation anywhere in the world. Maintaining the ability to provide Product support includes assuring that subcomponents and materials are available, maintaining tooling and other production capability and re-engineering components or systems to address obsolescence.

**44. Change in Control**

In the event there is a change in control with respect to Supplier, Buyer shall have the right to terminate the Order or Agreement in whole or part upon thirty (30) days written notice with Buyer's only obligation to pay for

those goods and services actually received. A change in control of Supplier is deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of twenty-five (25%) or more of the ownership interests in Supplier.

45. **Privacy**

(a) The following definitions are applicable to this provision:

“Data Privacy Laws” shall mean laws relating to data privacy, trans-border data flow or data protection, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the implementing legislation and regulations of the European Union member states under the European Union Directive 95/46/EC.

“UTC Personal Data” shall mean that data related to this Release that is subject to any Data Privacy Laws.

- (b) Supplier shall comply with the provisions of, and the obligations imposed on Supplier under, applicable Data Privacy Laws. In addition, Supplier shall provide UTC with such assistance as UTC may reasonably require to fulfill the responsibilities of UTC under such Data Privacy Laws. Supplier also shall comply with the data privacy policies of UTC, as well as the global data privacy policies of any self-regulatory organizations to which UTC belongs; and which are applicable to Supplier in relation to UTC Personal Data.
- (c) All UTC Personal Data acquired by Supplier shall be returned or destroyed (at the option of UTC) by Supplier on request, unless and to the extent such UTC Personal Data is required by Supplier to discharge its obligations hereunder or under applicable Data Privacy Laws.
- (d) Supplier shall be responsible for the acts and omissions of any Subcontractor or other third party that processes (within the meaning of the applicable Data Privacy Laws) UTC Personal Data on Supplier's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such UTC Personal Data.
- (e) Without limiting Supplier's obligations with respect to data security, Supplier shall:

- i. take commercially reasonable steps to ensure the reliability of Supplier Personnel who have access to the UTC Personal Data;
  - ii. provide UTC with such information, assistance and cooperation as UTC may reasonably require from time to time to establish Supplier's compliance with the obligations relating to security contained in the Data Privacy Laws; and
  - iii. inform UTC as soon as reasonably practicable of any particular risk to the security of any of their computer networks of which it becomes aware and of the categories of UTC Personal Data and individuals that may be affected.
- (f) In the event Supplier is located outside the European Economic Area (EEA), or it is otherwise necessary for UTC to transfer UTC Personal Data to a country outside the EEA for Supplier processing, Supplier shall enter into an agreement with UTC obligating the Supplier to adhere to the requirements imposed by the standard contractual clauses for the transfer of UTC Personal Data to processors established in third countries issued by the European Commission pursuant to Article 26(2) and (4) of EU Directive 95/46/EC, unless the country of transfer is a country the European Commission has determined ensures an adequate level of privacy protection by reason of its domestic law, in accordance with Article 25(6) of EU Directive 95/46/EC.
- (g) In the event Supplier is located in the EEA or a country the European Commission has determined ensures an adequate level of privacy protection under Article 25(6) of EU Directive 95/46/EC, Supplier shall ensure that any Subcontractors and other third parties with whom it contracts to process UTC Personal Data comply with data security requirements of the applicable Data Privacy Laws and any relevant data protection contractual terms entered into between UTC and Supplier.
- (h) Supplier shall not, and shall ensure that Subcontractors and other third parties with whom it contracts to process UTC Personal Data on its behalf shall not, (i) transfer UTC Personal Data to a territory outside the EEA, except on terms substantially in accordance with the standard contractual clauses issued by the European Commission pursuant to EU Directive 95/46/EC, and (ii) operate in relation to such UTC Personal Data in any way that could put UTC in breach of its obligations under the Data Privacy Laws.

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46. **U.S. Government Provisions and Clauses for Orders under U.S. Government Contracts**

For Orders issued under prime contracts with the US Government or subcontracts at any tier under US Government contracts, the provisions of the version of “**U.S. Government Provisions and Clauses for Orders Under U.S. Government Contracts**” in effect on the date of the particular Order. These provisions are made available on the Internet at the following URL and will be provided to Supplier in hard copy upon written request.

<http://www.utc.com/About+UTC/Suppliers+%26+Partners/Purchase+terms+and+conditions>

### Materials of Concern

Material of Concern	CAS No.	Typical Applications
Arsenic compounds	7440-38-2	electroplating
Asbestos	1332-21-4 (multiple)*	Fibrous silicates, including actinolite, amosite, anthophyllite, chrysolite, crocidolite, tremolite
Benzene	71-43-2	
Beryllium	7440-41-7	Copper and aluminum alloys
Cadmium & compounds	7440-43-9 (multiple)*	Plating, solders, braze filler materials
CFCs	76-13-1 (multiple)*	Cleaner, solvent, refrigerant.
Chlorinated Solvents (not specifically listed):	67-66-3	Use appropriate MSDS sheet for safety information.
Dichloromethane (methylene chloride)	75-09-2	Paint stripper
Tetrachloroethylene (perchloroethylene)	127-18-4	Cleaner, solvent
1,1,1- Trichloroethane (methyl chloroform)	71-55-6	Cleaner, solvent
Trichloroethylene	79-01-6	Cleaner, solvent
Tetrachloromethane, carbon tetrachloride	56-23-5	Cleaner, solvent
Trichloromethane (chloroform)	67-66-3	Cleaner solvent
Chromium (VI) compounds	1333-82-0 (multiple)*	Plating, anodizing, conversion coatings, primers
- Dilute chromic acid	1333-82-0 (multiple)*	Passivation and cleaning
Cyanide Compounds	506-64-9 (multiple)*	Plating
Dimethylformamide; n,n-	68-12-2	Electrical contact cleaners
Ethyl alcohol	64-17-5	Handwipe
Ethylene glycol ether	111-76-2 (multiple)*	PWB solder mask, coatings, flux
Formaldehyde	50-00-0	Various compounds

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Halons	74-83-9 (multiple)*	Fire suppressant
HCFC	75-45-6 (multiple)*	Cleaner, solvent, refrigerant
Hydrazine	302-01-2	Propellant
Hydrogen fluoride (HF)	7664-39-3	Etchant, chem. milling
Lead	7439-92-1 (multiple)*	Solder, seals, antiseize & antigallant coatings
Mercury compounds	21908-53-2 (multiple)*	Switches, gauges
Methanol	67-56-1	Handwipe, solvent
Methylenedianiline; 4,4-(MDA)	101-77-9	Epoxy curing agent
Methyl ethyl ketone (MEK)	78-93-3	Solvent in paint, primer or adhesive, cleaner
Methyl iso-butyl ketone (MIBK)	108-10-1	Solvent in paint, primer or adhesive, cleaner
n-methyl-2-pyrrolidone (NMP)	872-50-4	Solvent
m-Phenylenediamine	108-45-2	Catalyst- 11
n- propyl bromide, 1-bromopropane (NPB)	106-94-5	
Perfluorocarbons	76-13-1 (multiple)*	Solvent cleaning of electronics, foaming agent, refrigerant formulation, semiconductor mfg
Brominated flame retardants, PBB, PBDE	59536-65-1 (multiple)*	Flame retardant in electric components, wiring boards
Polychlorinated biphenyl (PCBs)	1336-36-3	Coolant, lubricant
Phenol, phenolic resin	108-95-2	Molding compounds, paint
Radioactive Elements	1314-20-1 (multiple)*	Thoriated nickel & magnesium alloys
Styrene	100-42-5	Thinning agent
Toluene	108-88-3	Solvent in paint, primer or adhesive, cleaner
Toluene diisocyanate	584-84-9 (multiple)*	Foaming agent
Xylene	1330-20-7	Solvent in paint, primer or adhesive, cleaner

\* Listed CAS number is illustrative for the class of chemicals indicated. The chemical class contains multiple compounds, and the specific chemical name and corresponding CAS number should be used to evaluate relative hazard for application specific risk assessments.

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