



**UNITED TECHNOLOGIES CORPORATION**

**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**NOVEMBER 15, 2009**

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## 1. **Acceptance**

Supplier's (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order, including these Terms and Conditions. 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. If the Order is an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms set forth in the Order.

## 2. **Definitions**

- 2.1. "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.
- 2.2. "Agreement" means the master terms agreement, long term agreement, subcontract, or other agreement that references these terms and conditions, and pursuant to which Orders are issued to Supplier.
- 2.3. "Buyer" means United Technologies Corporation ("UTC") or the UTC Affiliate that issues an Order referencing these terms and conditions, and any successor or assignee of Buyer.
- 2.4. "Buyer's Customer" means the ultimate owner, lessee, or operator of the Goods and includes the purchaser of an end product incorporating the Goods and/or Services provided by the Supplier under the Order.
- 2.5. "Delivery Date" means the date of delivery for Goods and Services as specified in an Order and/or by the Delivery System.
- 2.6. "Delivery System" means Buyer's computer-based, web-enabled delivery scheduling system.
- 2.7. "FAA" means the United States Federal Aviation Administration.
- 2.8. "Goods" means goods, supplies, software, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Order. Where the context permits, the use of the term Goods shall include Services.
- 2.9. "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 2.10. "Lead Time" means the mutually agreed upon time required for Supplier to produce the Goods.

- 2.11. "Need Date" means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.
- 2.12. "Party" or "Parties" shall mean Buyer and/or Supplier, individually or collectively, as the context requires.
- 2.13. "Prime Contract" means the government or commercial sales contract between Buyer and Buyer Customer.
- 2.14. "Order" means a paper or electronic document sent by Buyer to Supplier, or where provided for in an Agreement, an entry on a Buyer web site, to initiate the ordering of Goods or Services, such as a purchase order, a scheduling agreement, or other authorization or Order, and including change notices, supplements or modifications thereto. The phrase "in connection with the Order" includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes Agreement.
- 2.15. "Services" means any effort performed by Supplier necessary or incidental to the delivery of Goods, including design, engineering, installation, repair and maintenance. The term "Services" shall also include any effort required by an Order.
- 2.16. "Specifications" means all requirements with which Goods and Services and performance hereunder must comply, including, without limitation, ASQR-01 or its then-current successor, drawings, instructions and standards, on a Buyer web site or elsewhere, as such requirements are specified and/or referenced in Orders, as such requirements are modified from time to time by Buyer.
- 2.17. "Supplier" means the legal entity providing Goods and Services or otherwise performing work pursuant to an Order.
- 2.18. "Terms and Conditions" means this document, the United Technologies Corporation Standard Terms and Conditions of Purchase, regardless of whether modified or unmodified by the Parties.

### **3. Specifications**

Supplier shall comply with all Specifications.

### **4. Delivery**

- 4.1. Supplier shall use the Delivery System and electronic data exchange billing and invoicing systems (collectively, "Buyer Systems") specified by Buyer.
- 4.2. The delivery information in the Buyer Systems shall establish the Delivery Dates for the Goods and/or Services. Supplier shall only ship in accordance with the rules established by the Buyer Systems, and shall make use of the bar codes and other documentation generated by the Delivery System.

- 4.3. Time is of the essence in Supplier's performance of an Order, and Supplier shall deliver Goods and perform Services by the Delivery Date.
- 4.4. Shipment shall be to the location directed by Buyer. Invoicing, delivery terms, shipping, packing and waste reduction instructions shall be provided to Supplier through an attachment to, or printing on the face of, the Release, or incorporated into the Release by reference to a web site. In the absence of such instructions, the delivery terms for Goods shall be FCA Supplier's facility (Incoterms 2000). Title and risk of loss shall pass to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point.
- 4.5. Delivery Dates which do not allow sufficient Lead Time shall be considered Need Dates and Supplier shall use all commercially reasonable efforts to meet Need Dates. If Supplier agrees to the Need Date, the Need Date shall be considered the Delivery Date.
- 4.6. If Supplier is unable to deliver Goods by the Need Date, Buyer may, without liability: (i) reduce or cancel its requirements for any part of the quantity of the Goods that cannot be delivered by the Need Date, (ii) reallocate to another Order, or reschedule, any portion of the Goods that cannot be delivered by the Need Date, or (iii) waive the Need Date and accept Goods on the Delivery Date.
- 4.7. Any forecasts of quantity and schedule that are set forth in the Delivery System are estimates and are for planning purposes only.
- 4.8. Without affecting any other rights of Buyer, Buyer may cancel Orders, in whole or in part, without liability to Supplier, at any time prior to commencement of Lead Time.

## **5. Inspection, Acceptance and Rejection**

- 5.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all requirements of an Order.
- 5.2. Buyer may provide written notice of acceptance of the Goods to Supplier. However, in the absence of Buyer's written acceptance and notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of or (iv) delivery of the Goods, acceptance shall not be deemed to occur until twelve (12) months following Buyer's receipt of Goods ("Inspection Period"). Transfer of title to Buyer shall not constitute acceptance.
- 5.3. During the Inspection Period, Buyer may, with respect to any Goods that do not conform in any respect to the Order: (i) reject all or a portion of such nonconforming Goods; (ii) accept all or a portion of such nonconforming 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.
- 5.4. Within thirty (30) days of Supplier's receipt of Buyer's notification of a nonconformity, Supplier shall investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer.

- 5.5. With respect to rejected nonconforming Goods, Buyer may at its election and at Supplier's risk and expense (i) hold nonconforming Goods for Supplier, or (ii) return (Ex Works, Incoterms 2000, facility where Goods are rejected) nonconforming Goods to Supplier for, at Buyer's option, either (a) full credit or refund or (b) replacement Goods to be received within 24 hours of nonconformity notification. Title to such rejected Goods returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss. Additionally, rejected nonconforming Goods shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable law, and accompanied by a disclosure of Buyer's prior rejection(s).
- 5.6. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including but not limited to labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

## **6. Warranty**

- 6.1. Supplier warrants to Buyer that all Goods provided under the Order shall be and continue to be: (i) merchantable and fit for the purpose intended; (ii) new; (iii) free from defects in material and workmanship; (iv) free from defects in design if the design is not provided by Buyer; (v) manufactured in strict accordance with the Specifications; and (vi) free from liens or encumbrances on title (collectively, for this Section "Warranty").
- 6.2. Buyer may require Supplier to promptly repair or replace, at Buyer's option, any Goods which breach the Warranty. Buyer may return ship the Goods on the fastest available commercial carrier at Supplier's expense and risk of loss. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss and shall be accompanied by notice stating whether they are new replacements or repaired originals, and shall continue to be covered under this warranty. Supplier shall conduct intake, review, analysis and any other activity required to evaluate whether the returned Goods are covered by the warranty at no expense to Buyer.
- 6.3. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods not conforming to the warranty, including but not limited to labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

## **7. Indemnification**

Supplier shall indemnify and save harmless Buyer, Buyer's insurers and Buyer's affiliates and their employees, agents, officers and directors for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorneys' fees) relating to, arising out of, or caused by the performance hereunder, any act or

omission of Supplier or any Goods or Services. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.

## **8. Taxes**

- 8.1. Tax Liability: Supplier shall properly impose upon, collect and remit from Buyer any and all sales, use, excise, transaction and value added taxes, customs, duties, contributions, or similar levies by taxing jurisdictions as required by law ("Taxes") that are imposed by any government Tax authority ("Tax Authority") upon Buyer's payments pursuant to the Order, and are the legal obligation of the Buyer. Each of the Taxes shall be separately stated on all applicable Supplier invoices.
- 8.2. Tax Exceptions: No Taxes, interest, penalties, or other additions to Taxes, shall be collected by Supplier if, pursuant to the Order or the laws of the applicable Tax Authority, (i) the transaction is not subject to Taxes; (ii) Buyer has been authorized to pay Taxes directly to the appropriate Tax Authority; or (iii) Supplier is obligated to pay the Taxes. Supplier shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.
- 8.3. Tax Assessment Notification: Supplier shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing directed to: Manager, Tax Compliance, United Technologies Corporation, Ten Farm Springs Road M/S 10FS-1, Farmington, CT 06032.
- 8.4. Tax Disputes: Supplier shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from the Order. If Buyer may directly contest any Taxes in its own name, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall in good faith, as requested by Buyer, contest the Taxes. Supplier shall supply Buyer with information and documents as Buyer may reasonably request to control or participate in any proceeding to the extent permitted herein.
- 8.5. Tax Refund and Indemnification: If Supplier receives a refund of any Taxes attributable to Buyer; Supplier shall pay such amount to Buyer within thirty (30) days of receipt. Supplier shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Supplier's violation of its obligations under this Section.
- 8.6. Delivery of Software: Supplier shall deliver electronically via the internet all software of any type (including manuals) that are the subject of, rather than are ancillary to, the Order. Supplier shall separately itemize the costs of electronically delivered software, licenses, fees and all Services on all invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet." License locations should clearly be stipulated in the Order to allow for proper allocation of any Taxes owed.
- 8.7. Property Taxes: Buyer shall report and remit any Taxes relating to property for which Buyer retains title pursuant to the Order, accruing prior to and after the commencement

of the Order. Where Supplier possesses Buyer-owned property, Supplier shall notify Buyer of any disposal or movement of such property. Supplier shall report and remit any property-related Taxes relating to property for which Supplier retains title pursuant to the Order, accruing prior to and after the commencement of the Order.

## **9. Inspection and Audit Rights**

- 9.1. Supplier (which, for the purposes of this Section, includes Supplier's suppliers) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's Customers and/or to any competent regulatory authority, unrestricted access to Supplier's books and records (including, without limitation, agreements and technical inspection and quality records, but excluding financial books and records), wherever such books and records may be located (including third-party repositories), and (ii) provide Buyer, Buyer's Customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at Supplier's premises, including manufacturing and test locations for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order or for any other purpose indicated by Buyer's Customers and/or said authority in connection with the design, development, certification, manufacture, sale, use and/or support of the Goods. Supplier and its subcontractors shall furnish all reasonable facilities and assistance for the safe performance of the inspection, test, audit and/or investigation.
- 9.2. Supplier shall maintain complete inspection records for all Goods which 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, (v) the latest time required by the ASQR-01 version effective as of the date of the Order, or (vi) as otherwise directed by Buyer.
- 9.3. Any corrective action requested by Buyer, Buyer's Customers and/or any said authority following any such inspection, test, audit or investigation shall be implemented by Supplier at no cost.
- 9.4. In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer may inspect and audit, on reasonable notice, Supplier's financial books and records if the Order: (i) is a time and material order, (ii) is a cost-based order, or (iii) provides for advance or progress payments based on costs incurred by Supplier.

## **10. Aviation Unique Requirements**

- 10.1. Supplier shall immediately notify Buyer upon receipt of any Government-Industry Data Exchange Program (GIDEP) Alert related to Goods, and shall provide Buyer a list of all affected Goods by Order, part number, invoice number, serial number, or any other identifying number as applicable. For GIDEP Alerts caused in whole or in part by the Goods, Supplier shall immediately replace all affected Goods at its sole expense including any installation and removal costs for the Goods so affected and reimburse Buyer for any damages and commercially reasonable expenses incurred by Buyer.



- 10.2. If the FAA, or other aviation authority, issues Airworthiness Directives (ADs), or the equivalent of Airworthiness Directives, related to Goods, Supplier shall immediately remove the cause(s) of the ADs or AD equivalents in all Goods delivered and to be delivered to Buyer including but not limited to Goods utilized in the field. Supplier shall reimburse Buyer for any costs and damages associated with removal and redelivery of Goods, incurred by Buyer as a result of such ADs or equivalent of ADs which are attributable to the Goods.
- 10.3. Following completion of any Buyer required reviews and approvals, Supplier shall provide all Service Bulletins, Safety Bulletins and Administrative Directives (collectively in this sub-Section "Bulletins") to Buyer immediately upon issuance. Supplier shall implement Supplier's recommendations contained in Bulletins on all Goods delivered and to be delivered.

## **11. Product Support Obligation**

Supplier shall maintain the ability to, and shall, provide product support for the Goods, which shall include, without limitation, assuring that subcomponents and materials are available, maintaining tooling and other production capability and re-engineering components or systems to address obsolescence until the later of twenty five (25) years after the last Order is placed by Buyer for Goods or less than five (5) end products incorporating Goods are in operation anywhere in the world.

## **12. Buyer-Furnished and Buyer-Funded Items**

- 12.1. All material, including information, required to be furnished to Supplier under the Order ("Buyer Furnished Items") shall be delivered as specified in the Order, or, if not specified, in sufficient time to enable Supplier's timely performance. 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.
- 12.2. 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.
- 12.3. Buyer Furnished Items and Buyer Funded Items (collectively, "Buyer Items") shall be used only for the purposes of the Order. Supplier shall not use Buyer Items on any other order without Buyer's written permission. Supplier shall, at its own expense, (i) establish and follow a preventative maintenance calibration and repair program for, (ii) safely store (separated from other material where practicable), and (iii) maintain all Buyer Items in good, workable condition.
- 12.4. Supplier shall account to Buyer for the proceeds from the sale of scrap generated during the performance of the Order by the processing of Buyer Items unless Supplier reimburses Buyer at Buyer's then-current prices for any Buyer Items used by Supplier.

- 12.5. Title to any Buyer Items shall remain with Buyer. Buyer, in order to protect its interests, may require Supplier to execute documents that are related to the Buyer Items, including, Uniform Commercial Code financing statements or any similar documents. Supplier shall plainly mark and adequately identify Buyer Items as being Buyer's property. Supplier shall not substitute any property for or modify Buyer-Furnished Items.
- 12.6. Upon Buyer's request, Supplier shall provide an annual written inventory of Buyer's Items, including certification of compliance with this provision and proof of adequate insurance covering full replacement cost of Buyer Items.
- 12.7. Supplier shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged or destroyed. Upon completion or termination of the Order, or at any time upon Buyer's request, Supplier shall, at its own expense, dispose of Buyer Items in accordance with Buyer's instructions.
- 12.8. If Buyer Items are furnished to Supplier in connection with the production of Goods to be imported by Buyer into the United States, Supplier shall comply with all instructions from Buyer to document the value of such Buyer Items as "assists" in compliance with U.S. Customs and Border Protection requirements.

### **13. Changes**

- 13.1. Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) Prime Contract flowdown requirements and/or (viii) quality requirements ("Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.
- 13.2. If any Change under this Section 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 Buyer shall modify the Order accordingly. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) days after Supplier's receipt of the Change.
- 13.3. If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, as directed by Buyer.
- 13.4. If Supplier considers that Buyer's conduct constitutes a Change, Supplier shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Supplier's performance. Supplier shall take no action

to implement any such Change without written direction from Buyer's authorized procurement representative.

**14. Stop Work Order**

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Order for a period of up to 120 days ("Stop Work Period") at each such time. Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer shall either: (i) cancel the stop-work order and Supplier shall resume work; or (ii) terminate the work covered by the stop-work order, for default or convenience, as the context requires, in accordance with the provisions of the Order.

**15. Termination for Default**

- 15.1. Buyer may, by written notice, terminate the Order (which, for the avoidance of doubt, includes the Agreement) or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder, including a delivery obligation; (ii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance within ten (10) days following Buyer's demand therefore; or, (iii) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition.
- 15.2. Buyer shall have no liability in relation to those Goods terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased procurement costs, requalification costs, and other non-recurring costs, except in the circumstance of any failure or delay constituting an "Excusable Delay" as set forth in the Section herein entitled "Force Majeure".
- 15.3. If the Order is entirely or partially terminated under this Section, Buyer, in addition to any other rights Buyer may have, may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order; (ii) deliver the tooling and test equipment necessary to make or have made the Goods and provide technical and transition assistance; and (iii) provide to Buyer a worldwide, non-exclusive, paid-up, irrevocable, license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Goods.
- 15.4. If, after notice of termination under this Section, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Section. In such case, Supplier shall not be entitled to any remedy other than as provided for in the Termination for Convenience Section.

## **16. Termination for Convenience**

- 16.1. Buyer may, at any time, terminate all or part of the Order (which, for the avoidance of doubt, includes the Agreement), for its convenience upon written notice to Supplier.
- 16.2. Upon termination, in accordance with Buyer's written direction, Supplier will immediately:  
(i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) deliver to Buyer any and all Goods completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 16.3. In the event Buyer terminates for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods required to be delivered within the Lead Time period, calculated from the Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average lead time for the Goods in accordance with Buyer data. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier's termination claim must be submitted within ninety (90) days from the effective date of the termination.
- 16.4. Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

## **17. Customs Trade Partnership Against Terrorism (C-TPAT) Program**

**This provision is applicable to Orders in which Goods will be shipped into the United States.**

- 17.1. Supplier agrees that, during the period in which it ships Goods to Buyer, it and its subcontractors who either ship directly or package Goods for shipment will either (i) be certified under the Customs Trade Partnership Against Terrorism ("C-TPAT") program by the U.S. Bureau of Customs and Border Protection or (ii) demonstrate to Buyer's satisfaction that it meets the security requirements of C-TPAT. Accordingly, Supplier must either provide Buyer with documentation that it and its subcontractors are certified (e.g. C-TPAT certification or Status Verification Interface (SVI) number), or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with C-TPAT security requirements, available at [www.cbp.gov](http://www.cbp.gov).
- 17.2. Upon five (5) days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Supplier and its subcontractors, and make reasonable inspection of Supplier's and its subcontractors' premises, in order to verify compliance with the requirements of this provision.

17.3. Any delay in delivery due to Supplier's failure to comply with this provision shall not relieve Supplier of its obligations and shall not constitute a force majeure or give rise to an Excusable Delay.

**18. Intellectual Property Rights (for non-U.S. Government Orders)**

18.1. Background Intellectual Property shall mean all Intellectual Property other than Foreground Intellectual Property.

18.2. Foreground Intellectual Property shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.

18.3. Each Party retains its existing rights in Background Intellectual Property.

18.4. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the 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 to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

18.5. Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.

18.6. Supplier hereby grants to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.

18.7. Supplier hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.

- 18.8. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, (including free software, open source software, freeware, General Public License-governed software, or the like), in any form that is subject to any obligations or conditions that could reasonably or arguably could provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software.
- 18.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

**19. Intellectual Property Indemnification**

- 19.1. Supplier shall indemnify and hold harmless Buyer, its Affiliates, subsidiaries, agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use or sale of any Goods or Services delivered or performed in connection with the Order ("Claim").
- 19.2. Supplier shall not be liable for any Claim based on Supplier's compliance with any Specification created by the Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the Specification was derived from, or provided by, Supplier; or (iii) Supplier knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.
- 19.3. Supplier shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as the Buyer's interests are affected, the Buyer shall have the right, at its own expense and without releasing any obligation of the Supplier, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 19.4. Buyer may supersede Supplier in the defense of any Claim, and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 19.5. If the manufacture, use or sale of the Goods is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to supply Goods to avoid a potential third party claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to use or sell such Goods; (ii) modify or replace such Goods with equivalent non-infringing Goods; or (iii) provide such other solution acceptable to

Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer Customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Goods. Supplier shall refund to Buyer the purchase price of any such Goods that Buyer is prohibited from using or selling.

## **20. Proprietary Information**

- 20.1. "Proprietary Information" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii) conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.
- 20.2. Unless the Supplier has received the Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 20.3. Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of the Supplier who have a need to know such Proprietary Information for the purposes of the Order and who have executed a written agreement with the Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 20.4. The Order shall not restrict the Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of the Supplier or a third party; (ii) is received by the Supplier without restriction as to disclosure by the Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by the Buyer; or (iv) was independently developed by employees of the Supplier who did not have access to any of Buyer's Proprietary Information.
- 20.5. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section are fulfilled by Supplier.

- 20.6. Buyer shall have the right to audit all pertinent documentation of the Supplier, and to make reasonable inspection of the Supplier's premises, in order to verify compliance with this Section.
- 20.7. Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of the Supplier or any third party.
- 20.8. Unless required otherwise by law or the Order, the Supplier shall promptly return, or otherwise dispose of Proprietary Information as the Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information one (1) year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 20.9. Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

**This document contains the property of United Technologies Corporation and/or a United Technologies Corporation Affiliate. 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, Transport Canada Civil Aviation (TCCA) or other government approval to do so, without express written permission. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of United Technologies Corporation and/or the United Technologies Affiliate issuing the Order is not authorized and may result in criminal and/or civil liability.**

- 20.10. Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any United Technologies Corporation Affiliates. Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to the FAA, the European Aviation Safety Agency (EASA), TCCA, any other governing international airworthiness certifying authority, and/or any other department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals.
- 20.11. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Purchase Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.
- 20.12. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function as any parts Supplier manufactures for Buyer using



Proprietary Information. Supplier's notification shall describe the parts to be manufactured for the other entity, identify the corresponding parts Supplier manufactures for Buyer and provide Buyer with sufficient information to demonstrate that Supplier will manufacture such parts without reference to or use of Proprietary Information. If Supplier manufactures or sells any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining FAA or other government approval for such parts), then it shall be considered a breach of the Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order.

- 20.13. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any unauthorized third parties. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering).
- 20.14. For proprietary information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreement between the Parties.
- 20.15. In the case of Pratt & Whitney as the Buyer, Buyer expressly consents to Supplier's use of Pratt & Whitney Proprietary Information with respect to designs, 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: (i) was provided to Supplier by Buyer after January 20, 1984; (ii) 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; (iii) pertains to commercial engine parts; or (iv) is to be used for other than direct U. S. Government military contracts. This consent does not authorize: (a) infringement of any Buyer patent or modification of the terms of any Buyer patent license to Supplier; (b) use of Buyer quality assurance or engineering support services in performing a purchase order from any customer other than Buyer or a partner or higher-tier supplier for Buyer; (c) 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 (d) 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.

## **21. Offset**

- 21.1. Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by the Supplier for the Order, for satisfying international offset obligations of Buyer, Buyer's Affiliates, or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by the Order or the subcontracting of the Order only upon Buyer's written approval.
- 21.2. Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods supplied by Supplier to the value of the end item sold by Buyer into the particular country.

21.3. Upon Buyer's request the Supplier shall (i) report all subcontract sources outside the United States utilized in the fulfillment of this Release, 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.

## **22. Insurance**

22.1. Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed under the Order for the duration of the 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; (iii) if Supplier vehicles are used on Buyer's premises and/or used to accomplish work under the 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; (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;

22.2. 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: Supplier shall maintain Aircraft Product Liability, Completed Operations Liability and, if applicable to the Goods or Services, 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. Such insurance shall remain in effect for two (2) years after the expiration or termination of the Order.

22.3. 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.

22.4. 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 provide that where there is more than one insured the policy will 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. 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 Order 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; such waiver shall be reflected on the insurance certificate. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention.

- 22.5. 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.
- 22.6. Supplier shall require its subcontractors to maintain insurance in the amounts and types required by this provision

### **23. Disaster Recovery**

If Supplier is (i) providing Flight Safety Parts in accordance with the current revision of ASQR-01, ASQR-09.1, and/or any documents referenced therein; (ii) a sole source of supply; or (iii) providing products whose Lead Time exceeds one hundred twenty (120) days; or as otherwise directed by Buyer, Supplier shall develop and maintain a Disaster Recovery Plan acceptable to Buyer for the recovery and continuation of business related to the design, development, certification, manufacture, sale, use and/or support of the Goods furnished hereunder, in the event of a disaster or emergency. Such plan shall, among other things, prevent or limit the interruption of the supply of Goods in conformity with the requirements set forth herein. Supplier shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

### **24. Standards of Business Conduct**

Supplier shall adopt and comply with a policy statement or code of conduct regarding business ethics ("Code"). This Code will be suitable for Supplier's business and as a minimum will require compliance with all applicable laws and regulations. The Code shall assure a safe and healthy work environment, prohibit the use of child or forced labor, provide for the protection of the environment and minimization of waste, emissions, energy consumption and the use of materials of concern and prohibit engagement in corrupt practices (e.g. facilitating, offering or paying any bribe). This provision creates no additional duties for Buyer with respect to Supplier and confers no rights on third parties.

## **25. Compliance with Laws**

- 25.1. Supplier shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with US antiboycott laws, including (i) the manufacture or provisioning of Goods, (ii) the shipping of Goods and (iii) the configuration or content of Goods for the use intended by Buyer.
- 25.2. Supplier shall, at the earliest practicable time, notify in writing 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"). Any such suspension or debarment shall act as a cause for the Buyer to terminate the Order under the Section entitled Termination for Default.

## **26. Applicable Law and Forum**

- 26.1. The Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of Connecticut, USA (or in the 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 the Order in the appropriate court, or arbitration forum, if arbitration is required by law or the Order, 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.
- 26.2. Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described 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 (or in Montreal, Province of Quebec for Orders from Pratt & Whitney Canada). Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods, the Parties exclude the application of the provisions of said Convention to all transactions relating to the Order.

## **27. Export Control**

- 27.1. Supplier shall comply with the most current export control and sanctions laws, regulations, and orders applicable at the time of the export, re-export, transfer, disclosure or provision of Goods, Software, Technology or Services including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 C.F.R. parts 730-774; (ii)

International Traffic in Arms Regulations (“ITAR”) administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R. parts 500-598; and (iv) laws and regulations of other countries (collectively, “Export Control Laws”).

- 27.2. Unless the Order is for Goods to be supplied on a “build to print” basis by Supplier, Supplier shall provide Buyer with either (i) the United States Munitions List (“USML”) category of such Goods, Software, Technology or Services that are controlled by the ITAR, or (ii) the Export Control Classification Number (“ECCN”) of such Goods, Software or Technology that are controlled by the EAR, to include the ECCN of parts and components if such classification differs from the ECCN of the Goods or Software. If Supplier is in the business of manufacturing, exporting or brokering USML items, Supplier represents that it maintains registration with the Directorate of Defense Trade Controls as may be required by 22 C.F.R. §§ 122.1 and/or 129.3 of the ITAR.
- 27.3. Supplier shall not export, re-export, transfer, disclose or otherwise provide Buyer’s technical data controlled by Export Control Laws (“Technical Data”) to any foreign persons or foreign commercial entities unless Supplier receives advance, written authorization from Buyer. 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 and shall comply with all applicable export licenses or authorizations. Upon completion of its performance under the Order, Supplier and its subcontractors shall destroy or return to the Buyer all Technical Data.

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

- 28.1. Supplier represents and warrants that the Goods and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of any country or jurisdiction in the world, including but not limited to the United States, the European Union (“EU”), and nations adopting legislation similar to that of the EU, and that nothing prevents the sale or transport of the Goods or substances in Goods in any country or jurisdiction in the world and that all such Goods and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under REACH, if pre-registration, registration and/or authorization is required.
- 28.2. In addition to complying with REACH, the EU’s regulation of chemical substances (as is required under the Section hereto entitled “Compliance with Laws”), Supplier shall timely provide Buyer with all relevant information on the Goods so that the intent of REACH is met for communicating with downstream users as defined in Article 3(13) of REACH (any person established in the EU who uses a chemical substance in the course of his industrial or professional activities; the definition does not include the manufacturer, importer, distributor, or consumer), and in any case, Supplier shall provide all information necessary for the Buyer and/or any downstream user to timely and accurately fulfill their obligations under REACH.

28.3. Supplier shall bear all costs, charges and expenses related to pre-registration, registration, evaluation and authorization under the REACH Regulation of the chemical substances that are the subject of the Order.

**29. Design and Process Specification Efforts**

**The following provision is 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.**

Supplier shall submit to Buyer's procurement representative a written report of Materials of Concern ("MOC") (as defined by Buyer's design requirements, Specifications, or similar requirements supplied by Buyer) that are used in the production of, or are in, products that are the subject of the design, development or processing efforts. The MOC Report shall be submitted in the format specified by Buyer 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 any MOC. Supplier shall cooperate with Buyer to consider other alternative materials as discussed at design reviews.

**30. News Releases/Publicity**

Supplier shall not make or authorize any news release, advertisement, or other disclosure that relates to the Order or the relationship between Buyer and Supplier, denies or confirms the existence of the Order or makes use of Buyer's name or logo, without the prior written consent of Buyer.

**31. Assignment**

Any assignment by Supplier of the Order, in whole or in part, without Buyer's prior written consent shall be null and void, and shall constitute a material breach of the Order.

**32. Setoff**

Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under the Order or any other transaction with Buyer and its Affiliates.

**33. Covenants Against Kickbacks**

Supplier has not and shall not offer or give anything of value (in the form of entertainment, gifts, or otherwise) to Buyer's employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order.

**34. Utilization of Small and Small Disadvantaged Businesses**

For work performed in the United States under Orders placed by United States Buyers, 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 the 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.

**35. Duty to Proceed**

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

**36. Change in Control**

In the event there is a change in control with respect to Supplier, if a Buyer competitor or other Buyer supplier of similar Goods, gains control of Supplier or, in Buyer's sole judgment, Buyer is insecure about future performance or Buyer's commercial position as a result of a change in control, Buyer shall have the right to terminate the Order in whole or part upon thirty (30) days written notice with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiry of such thirty (30) day period. 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.

**37. Partial Invalidity/Unenforceability**

If in any instance any provision of the Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, 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. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable.

**38. Survival**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Order, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of the Order.

**39. No Waiver**

No failure of any Party to exercise any right under, or to require compliance with, the Order, or knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

**40. Remedies**

The rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

**41. Order of Precedence**

The order of precedence provision of an Agreement, if any, shall prevail over this Section.

If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the Section being modified; (ii) regarding product support obligations, the terms of any product support agreement entered into by the Parties; (iii) terms of any Agreement under which the Order is issued; and (iv) these Terms and Conditions.

**42. Delays**

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

**43. Force Majeure**

- 43.1. Supplier shall be liable for any failure or delay in performance in connection with the Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within three (3) days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (an "Excusable Delay"). If a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is an Excusable Delay as defined above and the good or service to be provided by such supplier is not obtainable by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel without liability to Supplier its purchase of any Goods affected by Supplier's failure or delay in performance and, if the



delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.

- 43.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control, including any cause attributable to Buyer Customers.

#### **44. Subcontracting**

Any subcontracting by Supplier of all or substantially all of its responsibilities or obligations hereunder, without Buyer's prior written consent, shall be wholly void, invalid and totally ineffective for all purposes. In the case of any subcontracting or approved delegation of any of its responsibilities or obligations hereunder, Supplier shall perform all supply management activities that are necessary for the on-time delivery of Goods conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring said suppliers under all provisions of the applicable subcontracts, and for ensuring that each of its suppliers comply with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any subcontracting, (ii) Buyer approval of the subcontractors, or (iii) Supplier's failure to provide for provisions in the relevant subcontracts that comply in substance with the requirements set forth herein.

#### **45. Dispute Resolution**

- 45.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under an Order, that Party must provide the other with a written request for dispute resolution. Each Party shall, within five (5) calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within thirty (30) calendar days of receipt of the request, vice presidents of each Party shall attempt to resolve the issue within sixty (60) calendar days of receipt of such written request.
- 45.2. Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
- 45.3. Each Party shall continue performing its obligations under the Order pending resolution of the dispute. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

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

For Orders issued under Prime Contracts with the U.S. Government or subcontracts at any tier under U.S. 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 shall apply. 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>

The Parties recognize that the URL may change from time to time and agree that any such change will not affect the applicability of the material referenced. UTC agrees to provide the new URL upon Supplier’s request in the event of a change.