



**UNITED TECHNOLOGIES CORPORATION**

**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**PRODUCT**

**NOVEMBER 2016 VERSION**

[Revised Section 4: Delivery, on June 22, 2018]

## TABLE OF CONTENTS

1. Definitions .....	4
2. Scope of Agreement .....	7
3. Specifications .....	7
4. Delivery.....	7
5. Inspection, Acceptance and Rejection.....	8
6. Warranty .....	9
7. Indemnification .....	10
8. Product Support Obligation .....	10
9. Taxes .....	10
10. Inspection and Audit Rights .....	11
11. Design and Process Specification Efforts .....	12
12. Aviation Unique Requirements.....	12
13. Buyer-Furnished and Buyer-Funded Items .....	13
14. Changes .....	14
15. Insurance .....	15
16. Termination for Convenience .....	16
17. Termination for Default .....	17
18. Intellectual Property Rights (for non-U.S. Government Orders) .....	18
19. Intellectual Property Indemnification .....	19
20. Proprietary Information.....	20
21. Security for UTC Information Stored by Supplier .....	23
22. Access to Facilities, Systems or UTC Information.....	26
23. Compliance with Laws .....	28
24. Conflict Minerals .....	29
25. REACH .....	29
26. Compliance Covenants.....	31
27. Supplier Code of Conduct .....	32
28. International Trade Compliance .....	32
29. Disaster Recovery .....	37
30. Offset.....	37
31. Assignment.....	37
32. Subcontracting .....	37
33. Change in Control or Grant of Security Interest .....	38
34. Stop Work Order.....	39
35. Force Majeure.....	39

36.	Duty to Proceed.....	40
37.	Assurance of Performance.....	40
38.	Setoff.....	40
39.	Governing Law and Forum.....	40
40.	Dispute Resolution.....	41
41.	U.S. Government Provisions for Orders under U.S. Government Contracts.....	41
42.	News Releases, Publicity and Other Disclosures.....	42
43.	Delays.....	42
44.	Remedies.....	42
45.	Partial Invalidity.....	42
46.	Survival.....	42
47.	No Waiver.....	43
48.	Relationship of the Parties.....	43
49.	Captions.....	43
50.	Interpretation.....	43
51.	No Conflicts.....	43
52.	Order of Precedence.....	43

## 1. **Definitions**

- 1.1 "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2 "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.
- 1.3 "Buyer" means United Technologies Corporation ("UTC") or the Buyer Affiliate that issues an Order referencing the Agreement and/or these Terms and Conditions, and any successor or assignee of Buyer.
- 1.4 "Buyer Personal Information" shall mean any information or data provided to Supplier or its agents, representatives, or subcontractors in connection with the Agreement, any Order and the transactions thereunder that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable law, that is subject to any Data Privacy Laws.
- 1.5 "Buyer's Customer" means the ultimate owner, lessee, or operator of the Goods and/or Services and includes the purchaser of an end product incorporating the Goods and/or Services provided by Supplier under the Order.
- 1.6 "Data Privacy Laws" shall mean applicable national, federal, state and provincial laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the laws and regulations of the European Union member states under the European Union Directive 95/46/EC (the "EU Directive"), the General Data Protection Regulation ("GDPR"), and any European Union law or regulation that may be enacted to replace the EU Directive or the GDPR.
- 1.7 "Delivery Date" means the date of delivery for Goods and/or Services as specified in an Order and/or by the Delivery System.
- 1.8 "Delivery System" means Buyer's computer-based, web-enabled delivery scheduling system or, alternatively, other paper-based communication system.
- 1.9 "Derived Technical Data" means information that is (i) of non-U.S. origin but subject to U.S. jurisdiction, and (ii) in any form necessary for the design, development, production, operation, modification or maintenance of Goods or Services, as set forth in applicable ITC Laws. Derived Technical Data can include, but is not limited to, drawings, specifications, or operation sheets that contain U.S.-origin data or that were developed using U.S.-origin data.
- 1.10 "FAA" means the U.S. Federal Aviation Administration.
- 1.11 "Facilities" means Buyer's facilities or the facilities of Buyer's Customers.

- 1.12 "Goods" means goods, parts, supplies, software, technology, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Order, and where the context requires such Services as are necessary and incidental to the delivery of Goods under any Order. For clarity, changes made by Buyer to the part numbers and/or other description of the Goods as a result of a change under the Changes clause of these Terms and Conditions will continue to be Goods.
- 1.13 "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.
- 1.14 "ITC Laws" mean the import, customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods 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 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (the "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; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.
- 1.15 "Lead Time" means the maximum time within which Supplier agrees to deliver Goods after receipt of a delivery requirement for such Goods. Unless otherwise mutually agreed between Buyer and Supplier, Lead Times are measured based on the date of receipt of the relevant Goods at Buyer's facility.
- 1.16 "Need Date" means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.
- 1.17 "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, a statement of work 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.
- 1.18 "Party" or "Parties" shall mean Buyer and/or Supplier, individually or collectively, as the context requires.

- 1.19 "Prime Contract" means the government or commercial sales contract between Buyer and Buyer's Customer.
- 1.20 "Processing" or "Processes" means with respect to UTC Information, to use, access, manipulate, modify, disclose, store (including backup), transmit, transfer, retain and dispose of such UTC Information.
- 1.21 "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.
- 1.22 "Specifications" means all requirements with which Goods and Services and performance hereunder must comply, including, without limitation, as applicable, 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.
- 1.23 "Supplier" means the legal entity providing Goods and/or Services or otherwise performing work pursuant to an Order.
- 1.24 "Supplier Personnel" shall mean Supplier's employees, agents, representatives, subcontractors, subcontractor employees, or any other person used by Supplier in the performance hereof.
- 1.25 "Systems" means Buyer's or Buyer's Customer's computer based information systems, computer systems, databases and/or files.
- 1.26 "Technical Data" means information that is necessary for the design, development, production, operation, modification or maintenance of Goods or Services as set forth in applicable ITC Laws. "Technical Data" includes Derived Technical Data.
- 1.27 "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.
- 1.28 "UTC Information" means (i) any Proprietary Information and any other data, materials or information owned or managed by Buyer or Buyer's Affiliates or which Buyer or Buyer's Affiliates are obligated to manage and/or protect on behalf of others: (a) provided to Supplier by Buyer or Buyer's Affiliate; or (b) that Supplier collects, Processes, generates or uses for or on behalf of or at the direction of Buyer or Buyer's Affiliate in providing the Services to Buyer or Buyer's Affiliate; or (c) collected, Processed, generated, or used by Supplier or Supplier Personnel in providing the Services, including in each case metadata from Buyer's or Buyer's Affiliates' use of the Services and derivatives of any of the foregoing (e.g., aggregations of UTC Information, profiles of users of the Services, or analysis of the content of Buyer or Buyer's Affiliate data records or how Buyer or Buyer's Affiliate uses the Services) and (ii) Buyer Personal Information.

## **2. Scope of Agreement**

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 offer, 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.

## **3. Specifications**

Supplier shall comply with all Specifications. Supplier shall immediately notify Buyer, in writing, of any failure of the Supplier, the Goods and/or the Services to comply with the 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 Order, or incorporated into the Order by reference to a web site. In the absence of such instructions, the delivery terms for Goods shall be FCA Supplier's facility (Incoterms 2010). 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. In addition to any other rights and remedies that Buyer may have, in the event of Supplier's nonconformance with any of the requirements under this Section or any other delivery obligation, Supplier shall be responsible for all shipping costs and expenses incurred with respect to such nonconformance, including the costs of expediting shipment with respect to late deliveries.

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 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: (i) reject all or a portion of any 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 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. Once approved by Buyer, Supplier must then timely implement such corrective action plan.

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 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 and/or Services, including but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.



## 6. Warranty

- 6.1 Supplier warrants to Buyer and Buyer's successors, assigns, Buyer's Customers, and users of Goods sold by Buyer that all Goods and/or Services provided under the Order shall be and continue to be: (i) merchantable; (ii) fit for the purpose intended; (iii) new; (iv) free from defects in material and workmanship; (v) free from defects in design if the design is not provided by Buyer; (vi) manufactured in strict accordance and complies with the Specifications; (vii) free from liens or encumbrances on title; and (viii) to the extent the Goods are, or contain, hardware, software, and/or firmware products, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing all times and dates) and are free of viruses and other sources of network corruption (collectively, for this Section, "Warranty"). If the Order requires specific Goods to perform as a system, the foregoing Warranty also shall apply to those Goods as a system. Inspection, test, acceptance or use of Goods and/or Services furnished hereunder shall not affect Supplier's obligations under this Warranty, and such Warranties shall survive inspection, test, acceptance and use.
- 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 and/or Services not conforming to the Warranty, including but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.
- 6.4 Supplier warrants to Buyer that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and highest generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements contained in the Order (the "Additional Service Warranty"). Supplier agrees that should any of the Services be defectively performed by Supplier, Supplier will re-perform or correct such defective Services at no additional charge. 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 the Services not conforming to the Additional Services Warranty.
- 6.5 Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier's subcontractors or business partners related to the Goods, Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or

stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.

**7. Indemnification**

Supplier shall indemnify and save harmless Buyer, Buyer's Customers, insurers, 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. Product Support Obligation**

Supplier shall maintain the ability to provide, 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 25 years after the last Order is placed by Buyer for Goods or less than 5 end products incorporating Goods are in operation anywhere in the world.

**9. Taxes**

9.1 Unless otherwise stated in this Agreement or the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees or duties ("Taxes") levied in regard to any of the transactions covered by this Agreement or the Order.

9.2 When invoicing, Supplier shall separately state any Taxes that Supplier is required to collect from Buyer and warrants that invoices comply with all requirements, as to content and format, of tax and civil statutes that have jurisdiction over the transaction(s) performed by Supplier.

9.3 Supplier is solely responsible for the fulfillment of its obligations to collect and remit Taxes collected from Buyer under this Agreement or the Order to the proper tax authorities, as required by law. Any penalties, fees or interest charges, or any other levy imposed by a government authority related to Supplier's failure to collect or remit any such Taxes shall be borne by Supplier. Buyer is not responsible for any tax based on Supplier's income, payroll or gross receipts.

9.4 If Buyer is required by law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.

9.5 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 at its stipulated address, directed to: Director, Indirect Tax. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes,

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 contest the Taxes as requested by the Buyer.

- 9.6 Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet."
- 9.7 Buyer and Supplier agree to work together in good faith as needed to eliminate or reduce any applicable Taxes, levies, excises, import fees, clearance costs, or other charges of any kind which may be payable by either Party, where applicable, and to secure any certificate of exemption or recoveries; provided that any such efforts do not cause a transfer of the tax burden from one Party to the other Party, or otherwise serve to modify the terms and conditions of this Agreement or the Order without written consent from both Parties.

## **10. Inspection and Audit Rights**

- 10.1 Supplier (which, for the purposes of this Section, includes Supplier and its suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's authorized representatives, Buyer's Customers and/or to any competent regulatory authority, unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records and documentation (including, without limitation, those pertaining to quality, inspection and testing of Goods and/or Services, security and data protection procedures, ethics and compliance programs, trade compliance records, and any other requirement or obligation under the Order), but excluding financial books and records), wherever such books and records may be located (including third-party repositories and at facilities of Supplier's suppliers, subcontractors, and business partners used in connection with the Order), and (ii) provide Buyer, Buyer's authorized representatives, 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, without limitation, manufacturing and test locations and the facilities of Supplier's suppliers, subcontractors and business partners used in connection with the Order 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 and/or Services. Supplier and its suppliers, subcontractors and business partners shall cooperate with Buyer, Buyer's authorized representatives, Buyer's Customers and/or any such authority to furnish all reasonable facilities for and assistance with the safe performance of inspections, tests, audits and/or investigations in connection with any Order and Goods and/or Services thereunder.
- 10.2 Supplier shall maintain such complete books, records and documentation for all Goods and/or Services, which shall be available to Buyer during performance of an Order and until the later of: (i) 4 years after final payment, (ii) final resolution of any dispute involving the Goods and/or Services 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, as applicable, or (vi) as otherwise directed by Buyer.

- 10.3 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 Supplier's cost.
- 10.4 In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer (and Buyer's authorized representatives) 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.

## **11. 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 Report") (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, concurrently 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 materials of concern. Supplier shall cooperate with Buyer to consider alternative materials as discussed at design reviews.

## **12. Aviation Unique Requirements**

- 12.1 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.
- 12.2 If the FAA, or other aviation authority, issues Airworthiness Directives ("ADs"), or the equivalent of ADs, 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, redelivery and installation of Goods, incurred by Buyer as a result of such ADs or equivalent of ADs which are attributable to the Goods.

12.3 Following completion of any Buyer required reviews and approvals, Supplier shall provide all service bulletins, safety bulletins and ADs (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.

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

13.1 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 and exclusive remedy.

13.2 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.

13.3 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 in good, workable condition all Buyer Items.

13.4 Unless otherwise directed by the Buyer, Supplier shall account to Buyer for the proceeds from the sale of scrap or other high cost material "off fall" generated during the performance of the Order by the processing of Buyer Items unless Supplier reimburses Buyer at Buyer's current prices for any Buyer Items used by Supplier. Intact or recognizable Buyer Items, the Goods or any other items in connection with this Order subject to the ITAR, 22 C.F.R. Chapter I, Subchapter M, Parts 120 – 130 or the EAR, 15 C.F.R. Parts 300 to 799, components, and parts are not considered scrap. All Buyer Items, Goods or other items subject to the ITAR and/or EAR must be controlled and unauthorized non-U.S. Person access restricted until it is rendered useless beyond repair, rehabilitation, or restoration to remove any unique identifiers, data plates, part numbers, serial numbers, defensive or offensive capability and any recognition characteristics of the item before being considered recyclable, waste, or discarded material, all in accordance with applicable ITC Laws, as defined herein.

13.5 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 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.

- 13.6 Upon Buyer's request, Supplier shall provide an annual written inventory of Buyer's Items, including certification of compliance with this Section and proof of adequate insurance covering full replacement cost of Buyer Items.
- 13.7 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.

#### **14. Changes**

- 14.1 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 (collectively "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.
- 14.2 Except as set forth herein, or as otherwise agreed, 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 15 days after Supplier's receipt of the Change. Supplier acknowledges and agrees that certain changes in delivery/performance schedule are normal and anticipated in the course of the program. Supplier further agrees that the cost of such changes is included in the prices provided under the Order. Accordingly, Supplier shall not be entitled to a price adjustment hereunder for any Change to the delivery schedule when deliveries are rescheduled within 12 months of the delivery schedule in existence at the time of the Change. If any Change ordered by Buyer as a result of an order by Buyer's Customer causes an increase or decrease in the cost of or the time required for performance of any Order or the Agreement, Supplier will receive an equitable adjustment in price or delivery schedule or both, but only if and to the proportional extent Buyer receives such an adjustment from Buyer's Customer, and provided all applicable requirements are followed by Supplier as set forth in the Change and the Order. 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.
- 14.3 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.

## 15. Insurance

- 15.1 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 and Goods to be produced under the Agreement and any Order for the duration of the Agreement and any 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 \$2,000,000 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; (vi) if Supplier is rendering computer, coding or information technology services and/or technology products on behalf of Buyer, Technology Errors and Omissions Liability Insurance with a limit of not less than \$10,000,000 per claim, which insurance shall include, at a minimum, coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render such services and products, computer or information technology services and technology products; and (vii) if Supplier is providing any software, code or algorithms (other than standardized off-the-shelf, non-customized software), has access to Systems, or will hold, process or store any UTC Information on Supplier's systems, Privacy and Network Security (Cyber) insurance, in an amount not less than \$5,000,000 per claim, which insurance shall include, at a minimum, protection for privacy breach, system breach, denial or loss of service, introduction, implantation, or spread of malicious software code, and unauthorized access to or use of computer systems.
- 15.2 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 Aviation 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 \$50,000,000.00 for any one occurrence and in the aggregate where applicable, including AV52 coverage (War Risks Insurance). Such insurance shall remain in effect for 2 years after the expiration or termination of the Order.
- 15.3 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.

- 15.4 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 10 days' (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 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 Buyer as an additional insured or, in the case of All Risk Property Insurance, naming UTC and Buyer as a loss payee, shall be filed with Buyer upon execution of the Order and before commencement of any work hereunder, and within 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 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. 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 Supplier whether or not such act or neglect is a breach or violation of any warranty, declaration or condition of the policies.
- 15.5 Buyer's failure to monitor compliance or unsatisfactory compliance with the terms of these insurance requirements does not modify or waive Supplier's obligations hereunder.
- 15.6 Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above will be assumed by, for the account of, and at the sole risk of Supplier. In no event will the Supplier's liability be limited to the extent of the minimum limits of insurance required herein.
- 15.7 Supplier shall require its subcontractors to maintain insurance in the amounts and types required by this 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) if requested by Buyer, deliver to Buyer any and all Goods and/or Services 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 and/or Services required to be delivered within the Lead Time period, calculated from 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 and/or Services 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 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.
- 16.5 Notwithstanding anything to the contrary in these Terms and Conditions or the Agreement, Buyer shall not be liable to Supplier for any costs or damages whatsoever for a termination for convenience with respect to a particular aircraft program of any of Buyer's Customers, if the termination is due to the cancellation, in whole or in part, of such aircraft program by Buyer's immediate customer(s) or Buyer's ultimate customer(s) or the bankruptcy or insolvency of such customer(s).

## **17. Termination for Default**

- 17.1 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 10 days following Buyer's demand 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 (each in subsection (iii), a "Supplier Insolvency").
- 17.2 Buyer shall have no liability in relation to those Goods and/or Services 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."
- 17.3 If the Order is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, 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, perform the Services and provide technical and transition assistance; and (iii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, 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 and/or perform, or have performed, the Services.

- 17.4 In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Agreement or these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to make, have made, use, sell and license the Goods and/or perform, or have performed, the Services, subject to Buyer's agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (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, and (ii) deliver the tooling and test equipment necessary to make or have made the Goods, provide the Services and provide technical and transition assistance in order to ensure Buyer's continuing requirements for Goods and/or Services.
- 17.5 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.

**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 and promises to assign 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 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 and promises to assign 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 and promises grant 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 and promises to waive 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 without limitation source code, compiled code, embedded software, firmware, free software, open source software, freeware, general public license-governed software, or any electronic hardware, including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software, and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software or electronic hardware.
- 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, Buyer's Customers, Affiliates, and subsidiaries, their 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, sale, offer for sale, import, or other exploitation 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 Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was derived from, recommended by, 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 Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of 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, sale, offer for sale, import, export, or other exploitation of any Goods or Services is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to provide or supply any Goods or Services to avoid a potential third party claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; 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's Customer approvals, qualifications, certifications, and the like, necessary for making, using, providing and selling alternate non-infringing Goods or Services. Supplier shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling, offering for sale, importing, exporting, or otherwise exploiting.

## **20. Proprietary Information**

- 20.1 In order to deliver the most effective and efficient Goods and/or Services possible and meet Buyer's requirements for those Goods and/or Services, Buyer and Supplier anticipate the need to exchange Proprietary Information (as defined below) for the design, development, testing, manufacture and/or repair of Goods and/or Services, as applicable in connection with such Order and/or the Agreement. In recognition of the value of that Proprietary Information, as well as to protect Buyer's goodwill and reputation in its products, Supplier agrees to the terms and conditions of this Section.
- 20.2 "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.
- 20.3 Unless Supplier has received 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.

- 20.4 Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 20.5 The Order shall not restrict 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 Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by 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 Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.
- 20.6 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.
- 20.7 Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 20.8 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 Supplier or any third party.
- 20.9 Unless required otherwise by law or the Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information 1 year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 20.10 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 Corporation Affiliate issuing the Order is not authorized and may result in criminal and/or civil liability.**

- 20.11 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 of Buyer's Affiliates, and/or to Buyer's Customer or Buyer's subcontractors and potential subcontractors provided that Buyer's Customer or subcontractors have a need to access or know such information. 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.
- 20.12 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.
- 20.13 Supplier acknowledges that exposure to Buyer's Proprietary Information and other Intellectual Property will make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for, parts that are the same parts or that have the same form, fit and function, as parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier also acknowledges that Buyer's goodwill and reputation which become associated with parts supplied by Supplier pursuant to an Order hereunder once approved for use in Buyer's products make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for those parts, or parts that have the same form, fit and function, for use in Buyer's products. Supplier agrees that it shall not manufacture or repair parts that Supplier supplies to Buyer pursuant to an Order hereunder, or manufacture or repair parts having the same form, fit and function, for use in Buyer's products, or apply for or assist another entity in obtaining FAA or other government approval for any such parts, without Buyer's written consent. If Supplier manufactures or repairs any such parts, or applies for or assists another entity in obtaining FAA or other government approval for any such parts, for use in Buyer's products without obtaining Buyer's written consent, 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.
- 20.14 Supplier acknowledges that exposure to Buyer's Proprietary Information and other Intellectual Property will make it easier for Supplier to manufacture or repair parts, or to apply for or assist another entity in obtaining FAA or other government approval for, parts that are the same or that have the same form, fit and function, as parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent prior to manufacturing or repairing any parts, or applying

for or assisting another entity in obtaining FAA or other government approval for any parts, for itself or another entity, that have the same form, fit and function as any parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier's notification shall (a) describe the parts to be manufactured or repaired, or for which application for or assistance to another entity in obtaining FAA or other government approval for such parts is to be provided, (b) identify the corresponding parts Supplier supplies to Buyer and (c) provide Buyer with sufficient information to demonstrate that Supplier will manufacture or repair, or apply for or assist another entity in obtaining FAA or other government approval for such parts (as the case may be) without reference to or use of Buyer Proprietary Information or other Buyer Intellectual Property. If Supplier manufactures or repairs 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.

- 20.15 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).
- 20.16 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 agreements between the Parties.
- 20.17 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 of 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. Security for UTC Information Stored by Supplier**

The following provisions are applicable whenever the Supplier will store UTC Information.

- 21.1 In addition to capitalized terms used herein but defined elsewhere in the Agreement and/or Order, the following terms shall have the following meanings:

“Security Issues” means (a) any situation, threat, vulnerability, act or omission posing a risk of giving rise to a Security Incident, or (b) any breach of Supplier’s representations or covenants in this Agreement and/or Order regarding safeguarding of UTC Information.

“Security Incident” means (a) any circumstance that involves, or which a party reasonably believes may involve, (i) the accidental or unauthorized access, use, disclosure, modification, storage, destruction or loss of UTC Information in Supplier’s or Supplier Personnel’s possession, custody or control; (ii) interference with system operation in an information system or in any medium or format, including paper (hard) copy documents that subjects UTC Information to risk of unauthorized access, use, disclosure, modification, storage, destruction or loss; or (b) any other similar incident as may be so defined by any Data Privacy Law and by any laws and regulations (national, federal, state and provincial) relating to the protection of UTC Information.

21.2 Supplier will use commercially reasonable efforts to establish, maintain and comply with administrative, technical and physical safeguards that are designed to (a) protect the security, availability and integrity of Supplier’s network, systems and operations, the Services and the UTC Information; (b) guard against Security Issues; and (c) satisfy the requirements for certification under ISO 27001. Supplier will develop, implement and maintain a written security program, reasonably acceptable to Buyer that includes appropriate administrative, technical, organizational and physical safeguards, security awareness and security measures designed to protect UTC Information from unauthorized access and use.

21.3 Supplier agrees to install and implement security hardware, software, procedures and policies that will provide effective information security and are acceptable to Buyer. Supplier agrees to monitor and update such hardware, software, procedures and policies to utilize improved technology and to respond to developing security threats in order to maintain a level of security protection, preparedness and resilience appropriate for the information involved and the then current state of security solutions. Upon request, Supplier shall provide Buyer with any reports or results of any internal audit related to IT security performed by or on behalf of Supplier during the term of the Agreement and/or Order or any audit reports issued, including but not limited to, under the SSAE 16 report or ISAE 3402.

21.4 Supplier further agrees to:

21.4.1 Only collect, access, use, or share UTC Information, or transfer UTC Information to authorized third parties, in performance of its obligations under the Agreement and/or Order, in conformance with this Agreement, or to comply with legal obligations. Supplier will not make any secondary or other use (e.g., for the purpose of data mining) of UTC Information except (a) as expressly authorized in writing by Buyer in connection with Buyer’s purchase of Goods and/or Services hereunder, or (b) as required by law.

21.4.2 Maintain and implement information security policies which address, at a minimum the following domains:

- information security policy



- organization of information security
- asset management
- human resourced security
- physical and environmental security
- communications and operations management
- access control
- information systems acquisition, development and maintenance
- information security incident management
- business continuity management
- regulatory compliance

and provide Buyer with an index or similar summary of its policies sufficient to evidence to Buyer's reasonable satisfaction that each domain is addressed in a manner consistent with this Section. Supplier shall provide Buyer with an updated index or summary, upon Buyer's request, and indicate any plans, including a timetable for implementation, of planned upgrades to comply with the policy. Supplier shall implement those reasonable requests for modification of such policy requested by Buyer.

- 21.4.3 Allow Buyer or its designee to conduct a security audit at its facilities on one day's notice, and allow Buyer at any time to conduct (or have conducted) a network audit. If the UTC Information is stored in a shared environment per the agreement of Buyer, then Buyer shall use a third party to conduct such audits. The audits shall include any facilities with UTC Information including backup storage facilities.
- 21.4.4 Segregate all UTC Information into a separate database only accessible by Buyer, and its agents and those employees and agents of Supplier that require access to perform the Services or to maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer. Logical segregation of data, if approved by Buyer, may be an acceptable alternative to this requirement. Supplier shall use reasonable efforts, as measured by the available technology at the time, to prevent anyone other than its authorized employees and Buyer and its agents from accessing the UTC Information.
- 21.4.5 Assure that all UTC Information and applicable software is appropriately backed up and recoverable in the event of a disaster or emergency, and that Supplier's disaster recovery plan (as may be otherwise required herein) shall incorporate such requirements.
- 21.4.6 Encryption Requirements. Supplier will use, and will cause Supplier Personnel to use, appropriate forms of encryption or other secure technologies at all times in connection with the Processing of UTC Information, including in connection with any transfer, communication, remote access or storage (including back-up storage) of UTC Information, as authorized or permitted under the Agreement and/or Order. Notwithstanding any provision to the contrary herein, Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g. laptop computers, PDAs (personal digital assistants), etc.)

- 21.4.7 Provide Buyer, at the time of signing this Agreement and/or Order, with a termination plan that addresses how UTC Information will be returned to Buyer at the end of this Agreement and/or Order, including backup and archival information, and how all UTC Information will be permanently removed from Supplier's equipment and facilities. This plan should include supplying the data to Buyer in an industry recognized non-proprietary database and, if not, a license to use the proprietary database software to access the data.
- 21.4.8 Provide information to and fully cooperate with Buyer in response to any subpoena, investigation or the like seeking UTC Information and provide information and assistance for Buyer to seek certification and the like relative to its information including information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that UTC Information be supplied to a third party.
- 21.4.9 When requested by Buyer, Supplier agrees to comply, within a reasonable period of time, with UTC Information security policies as provided to Supplier by Buyer.
- 21.4.10 Supplier shall not provide UTC Information to any other entity without the prior written approval of Buyer. A request for Buyer approval shall include agreement by Supplier, and such other entity, that (i) all of the requirements of this provision are applicable to their performance and (ii) Buyer shall have the right to perform the audits described above.
- 21.5 Supplier will provide to Buyer immediate written notice of (i) any failure to meet the then current standards for information security, and (ii) any and all reasonably suspected and/or confirmed Security Issues. Such notice will summarize in reasonable detail the impact on Buyer or any individuals affected by such Security Issue and the corrective action and remediation efforts taken or proposed to be taken by Supplier. Immediately following any Security Issue or any other failure to meet information security standards, whether identified by Supplier or Buyer, Supplier will take steps to mitigate risks posed, consult in good faith with Buyer regarding remediation efforts, and undertake a remediation plan which Buyer determines in its sole but reasonable discretion, to be necessary, reasonable or appropriate under the circumstances commensurate with the nature of the Security Issue or failure, or as requested by any government body. Supplier will be solely responsible for all costs and expenses, including, without limitation, the reasonable costs of re-testing performed to verify that any Security Issue has been remediated. Failure to remedy the risks of a Security Issue or failure within the time frame and manner specified by Buyer is deemed a material breach of this Agreement.

## **22. Access to Facilities, Systems or UTC Information**

These provisions apply whenever Supplier Personnel will be granted access to (i) Facilities and/or (ii) Systems, provided, however, that Buyer may apply the provisions herein in the event Supplier Personnel is otherwise granted access to UTC Information ("Access").

- 22.1 Supplier shall perform identity screenings, work authorization verifications and background checks on any and all Supplier Personnel seeking Access in order to identify

persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:

- 22.1.1 Verify the identity and requisite work authorization of Supplier Personnel requiring Access. Buyer or its Affiliates may further direct Supplier to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, at Supplier's sole cost and expense.
- 22.1.2 Except to the extent not permissible by applicable law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, as reported in the result of a background screen, or (ii) if they do have criminal convictions, Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
- 22.1.3 Supplier shall not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and will notify Buyer immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.
- 22.2 Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access, and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, including, without limitation, with respect to export compliance, privacy, protection of UTC Information, security clearance, applicable training, drug screening, credit check, technology control plans, intellectual property agreements and compliance with other site-specific policies and procedures.
- 22.3 Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet such Access requirements and that Access privileges are limited to approved Supplier Personnel. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any information related to Supplier Personnel is altered or rendered inaccurate for any reason, or (ii) the need for Access ceases for any of such Supplier Personnel having Access. The need to Access shall automatically cease for any Supplier employees who are terminated, transferred, or otherwise no longer employed by Supplier.
- 22.4 Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access, and Supplier agrees that Buyer shall have the right to deny, and, without notice, terminate Access by Supplier or any of Supplier Personnel in whole or in part. Inability of Supplier to comply with the requirements of this provision shall not excuse Supplier from performing the Agreement and/or Order and shall not constitute an "Excusable Delay" as set forth in the Section herein entitled "Force Majeure."
- 22.5 If Supplier is an individual, Supplier acknowledges that he/she is not an employee of Buyer or Buyer Affiliate and is not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health

care and other employee benefit plans and arrangements. If Supplier is a company or other entity, it acknowledges that Supplier Personnel are not Buyer or Buyer Affiliate employees and are not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care and other employee benefit plans and arrangements.

- 22.6 Supplier acknowledges and agrees that any breach of this Section may result in a violation of law for which Buyer, Supplier, and/or Supplier Personnel may be liable. At Buyer's request, in advance of any request or grant of Access and at any other time, Supplier will provide Buyer (i) written certification, in a form provided by Buyer, that the Access requirements have been met, and/or (ii) documentation to verify the methodology, process and results relied upon by Supplier to comply with the Access requirements. The current certification form is available at <http://www.utc.com/Suppliers/Pages/Terms-and-Conditions.aspx>.

### **23. Compliance with Laws**

- 23.1 Supplier shall comply with all applicable national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. antiboycott laws, including (i) the manufacture or provisioning of Goods and the supply of Services, (ii) the shipping of Goods and (iii) the configuration or content of Goods and/or Services for the use intended by Buyer.
- 23.2 Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.
- 23.3 Supplier agrees to comply with Buyer's environmental, health and safety standards, requirements and restrictions during Supplier's performance hereunder and when at Buyer's jobsites, including, without limitation, adhering to Buyer's safety instructions, notifying Buyer prior to the commencement of work and providing Buyer with any test reports or results related to Goods and/or Services, as applicable. Supplier agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify the material composition, on a substance by substance basis including quantity used of each substance, of any Goods and/or Services ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer. Separately and/or alternatively, Supplier agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Goods and/or Services ordered by Buyer and/or any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer, do not contain particular hazardous substances specified by Buyer.
- 23.4 Supplier shall comply with Data Privacy Laws and shall be responsible for providing any notice required by law to the data subjects whose personal data it provides to Buyer.

- 23.5 Supplier represents that it shall not furnish "counterfeit goods" to Buyer, defined as Goods or separately-identifiable items or components of Goods that may without limitation: (i) be an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes, or (vi) fail to meet the requirement of an "Approved Part" as defined in FAA Advisory Circular 21-29C and any updated version thereof. Counterfeit goods shall be deemed non-conforming, and in addition to any other rights Buyer may have at law or pursuant to an Order, the Agreement or these Terms and Conditions, Supplier shall disclose the source of the counterfeit good to Buyer and cooperate with Buyer with respect to any investigations or remedial actions undertaken by Buyer.
- 23.6 Supplier shall provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, or provision of Services, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement, the Order and/or these Terms and Conditions.

#### **24. Conflict Minerals**

Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Accordingly, Supplier commits to comply with Section 1502 of the Act and its implementing regulations; to the extent Supplier is not a "Registrant" as defined in the Act, Supplier shall comply with Section 1502 of the Act and its implementation regulations except for the filing requirements. In particular, Supplier commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides Buyer; (ii) due diligence of its supply chain, following a nationally or internationally recognized due diligence framework, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Supplier shall take all other measures as are necessary to comply with Section 1502 of the Act and its implementing regulations, including any amendments thereto.

#### **25. REACH**

- 25.1 Supplier represents and warrants that all the products, parts of products and/or materials supplied under this Agreement (the "Products") in the European Economic Area (EEA) (the EEA includes all countries in the European Union or "EU" as well as Norway, Iceland and Liechtenstein) will be supplied in full compliance with the provisions of the European Regulation (EC) n° 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (the "REACH Regulation"). Terms

used in this Section and not otherwise defined herein shall have the meanings ascribed to them in the REACH Regulation.

- 25.2 Supplier represents and warrants that all the substances in the Products supplied in the EEA, as well as substances manufactured in the EU that are present in the Products supplied anywhere, that require registration by Supplier or by Supplier's suppliers will be registered within the applicable REACH statutory deadlines and that such registration will cover all the uses identified in due time by Buyer to Supplier. Upon request, Supplier expressly undertakes to appoint (or obtain that the non-EU manufacturers/formulators appoint) an Only Representative to pre-register and register any substance present in the Products imported by Buyer or one of its affiliates or customers in the EEA.
- 25.3 Supplier shall investigate and communicate to Buyer if there are any substances present in the Products, or in any of the processes used to manufacture, assemble, use, maintain or repair the Products, that are listed: (i) in Annex XIV of REACH for Authorization, (ii) on the "Candidate List" (as published in accordance with Article 59.1 of the REACH Regulation), (iii) for which a REACH Annex XVII restriction exists or is proposed, (iv) in the "CoRAP" list for Substance Evaluation under REACH, or (v) the International Aerospace Environmental Group's ("IAEG") AD-DSL ("Aerospace and Defense Declarable Substance List"). Supplier shall provide Buyer for each such substance identified and communicated in (i) through (v) with (a) its chemical identity, (b) its weight/weight percent on a substance by substance basis in each Product type and in each component/part (hereinafter "part") thereof to the extent such parts are "articles" under REACH, and (c) safe use information. This ongoing obligation also applies to Products already supplied under this Agreement at the time the substances are identified as per (i) through (v) above.
- 25.4 In order to meet its obligation under Article 1.1.c of REACH, Supplier shall complete the Material Declaration Form on the Buyer's Supplier Portal for all Products supplied under this Agreement. In some cases, Buyer may designate an alternative reporting procedure. Supplier shall provide Buyer with the information required by the Material Declaration Form within 6 months of the Effective Date of this Agreement or within another mutually agreed timeframe. Supplier shall use best efforts to promptly supplement or update the provided information in the Material Declaration Form as appropriate (for example, as manufacturing processes change and different chemical substances are used in the Products) so that the Material Declaration Form is accurate and complete. Supplier shall also update the Material Declaration Form as soon as, but no later than 30 days from when, a new substance is identified and added to one of the lists set forth in Article 1.1.c above.
- 25.5 Supplier undertakes to timely provide Buyer with a safety data sheet ("SDS") that is compliant with REACH and the European Regulation (EC) n° 1272/2008 of 16 December 2008 on the classification, labeling and packaging of substances and mixtures (the "CLP Regulation"), including providing the SDS in the language of the country or area where the Goods will be delivered, for any Product supplied under this Agreement that meets the criteria of Article 31 of REACH on SDS, and where an SDS is not required, provide Buyer with such other information as set forth in Article 32 of REACH.
- 25.6 Where the Products or parts thereof meet the definition of "articles" under REACH and contain chemical substances listed on the Candidate List, Supplier undertakes to timely

provide Buyer with all relevant information on such Products and parts that Supplier and/or its suppliers are required to communicate down the supply chain under the REACH Regulation, including safe use information compliant with REACH.

- 25.7 To the extent that the Supplier is a chemical manufacturer, formulator or distributor, this paragraph applies. Supplier agrees to assist Buyer in (i) determining which chemicals/products supplied by Supplier to Buyer contain SVHC's that will require Authorisation for the Products supplied within Buyer's supply chain and (ii) determining which upstream Supplier(s) can ensure Authorisation for such substances to cover Buyer's uses, including but not limited to identifying and providing Buyer with the name of the chemical formulator or other Supplier supplying the SVHC that either require Authorisation or are likely to require Authorisation in the future. Supplier will assist Buyer in obtaining full product chemical content from upstream Suppliers for all Products supplied by Supplier to Buyer no later than 5 years from the effective date of the Agreement.
- 25.8 To the extent that the Supplier is a chemical manufacturer, formulator or distributor, this paragraph applies. Supplier agrees to assist Buyer in ensuring that all chemicals/products containing SVHC's that require Authorisation are appropriately Authorised for Buyer's uses, or at Buyer's request apply for such Authorisation where appropriate. Should Supplier apply for such Authorisation at Buyer's request, Supplier and Buyer shall negotiate an equitable fee for such service based on both the additional cost to Supplier as well as the benefit to Supplier in holding such an Authorisation.

## **26. Compliance Covenants**

- 26.1 Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities or otherwise) to Buyer's employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Supplier.
- 26.2 Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with these Terms and Conditions, the Agreement or any Order.
- 26.3 Supplier hereby further agrees that:
- 26.3.1 Supplier shall avoid and refrain from all activities that would place Supplier in a position where its judgment in its service on behalf of Buyer may, or may appear to, be biased or where Supplier could obtain, or appear to obtain, an unfair competitive advantage (all referred to as "Conflicts of Interest");
- 26.3.2 Neither Supplier nor, where applicable, any individuals used by the Supplier in the performance of the Services hereunder, is subject to post-employment or similar "revolving door" restrictions imposed under rules established by any government, including the U.S. Government, that might prohibit or impact the effective performance of the Services for or on behalf of Buyer; and

26.3.3 If Supplier is required to register with a federal, state or local authority due to Supplier's status under any such law (e.g. – lobbyist status), Supplier shall provide a copy of the registration and any report submitted to the authority related to the Services to Buyer.

## **27. Supplier Code of Conduct**

Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the United Technologies Corporation Supplier Code of Conduct available at the UTC Supplier Site at the following URL <http://www.utc.com/Suppliers/Pages/Supplier-Code-of-Conduct.aspx> ("Supplier Code of Conduct"). Supplier shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate) and implementation of corrective actions for violations of law, regulations, this Agreement, an Order, or the expectations set forth in the Supplier Code of Conduct; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

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

## **28. International Trade Compliance**

28.1 Compliance with International Trade Compliance ("ITC") Laws. Supplier shall comply with all ITC Laws.

28.2 Denied Party Screening. Supplier shall perform denied party screening on its employees and other parties (including sub-tier suppliers) whom Supplier engages or solicits to engage to perform production activities or Services under this Agreement. This requirement is intended to ensure that Supplier identifies any person or entity, whom Supplier engages or solicits to perform production activities or Services under this Agreement, that is ineligible to perform such activities or Services because of any embargo, sanction, debarment or denied party designation. In furtherance of this obligation, Supplier shall:

28.2.1 not engage any Specially Designated National ("SDN"), as determined by the U.S. Office of Foreign Assets Control ("OFAC"), to perform production activities or Services under this Agreement; and

28.2.2 not engage any person or entity to perform production activities or Services under this Agreement when:



- 28.2.2.1 such person or entity is identified as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government or any non-U.S. government or union of states (e.g., European Union); and
- 28.2.2.2 the reason(s) for such embargo, sanction, debarment or denied party designation apply to the production activities or Services subject to this Agreement;
- 28.2.2.3 except where such embargo, sanction, debarment or denied party designation conflicts with the anti-boycott laws of the United States.

Supplier shall notify Buyer immediately, in writing, if any of Supplier's employees or sub-tier suppliers who have been designated as an SDN, debarred, sanctioned or designated as a denied party and have performed production activities or Services under this Agreement. Supplier shall conduct periodic re-screening on all entities described above on no less than a quarterly basis. Supplier shall maintain records of its performance of denied party screening for a period of five-years following completion of screening and make such records available to Buyer upon request. Supplier shall incorporate this provision in all subcontracts with its suppliers or independent contractors with whom Supplier engages or employs, or intends to engage or employ, to perform production activities or Services under this Agreement.

- 28.3 **Export Licensing Responsibility.** If this Agreement requires either Party to obtain government-approved export authorization to facilitate activities and obligations set forth under this Agreement, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with applicable government regulations. The Parties shall without delay respond to requests for supporting documentation, including clarifying questionnaires or any other requested information necessary to secure government authorization. Each Party, as applicable, shall be individually responsible for obtaining required documentation or other information from any third party required by such Party to perform its obligations under this Agreement. Failure to obtain any required documentation or information from a third party shall result in the third party's exclusion from the government authorization. The Parties shall exchange copies of all government export authorizations related to the Technical Data, Goods or Services, and all provisions or conditions or information relating to the authorization, including but not limited to, any restriction on sublicensing, retransfer, resale or re-export, any requirement for non-disclosure agreements, and any limitation on individuals having access to Technical Data, Goods or Services. Each Party, as applicable, shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related paperwork and documentation (e.g., Destination Control Statements, Electronic Export Information filed via Automated Export System) are properly completed and timely filed.
- 28.4 **Export and Import Classification.** Where known, or where Supplier is the design authority for the Technical Data, Goods or Services that are subject to this Agreement, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number, (ii) either (a) the United States Munitions List ("USML") category of such Technical Data, Goods, or Services that are controlled by the ITAR, or (b) the Export Control Classification Number ("ECCN") of such Technical Data, Goods or Services that are controlled by the EAR,

including the ECCN of components comprising the Technical Data and/or Goods if such classification differs from the ECCN of the Technical Data and/or Goods, and (iii) any analogous classification under any other applicable law. If, under this Agreement Supplier will engage in any manufacturing or exporting of USML items, or the provision of defense services (as defined in 22 C.F.R. § 120.9), Supplier shall maintain registration with the Directorate of Defense Trade Controls ("DDTC") as may be required by 22 C.F.R. Part 122 of the ITAR. Upon request, Supplier shall provide Buyer annually with its DDTC registration expiration date.

- 28.5 Brokering. Supplier acknowledges that it shall not engage in brokering activity as that term is defined in 22 C.F.R. § 129.2 in conjunction with activity authorized pursuant to this Agreement.
- 28.6 Technical Data Transfer. Supplier shall not export, re-export, transfer, disclose or otherwise provide physical or electronic access to Technical Data to any person (including unauthorized third-party IT service providers) not authorized to receive Technical Data under existing ITC Laws and/or export authorization, or modify or divert such Technical Data to any military application or other end-use prohibited by applicable ITC Laws. Supplier shall develop and implement IT security procedures which ensure that Technical Data is accessible only by authorized persons. Any subcontracts for the manufacture of Goods, provision of Technical Data, or the provision of Services shall contain all the limitations of this Section and shall require compliance with all applicable export licenses or authorizations.
- 28.7 Destruction of Technical Data & Goods. Upon completion of performance under the Order, and expiration of recordkeeping obligations under this Agreement, Supplier and its suppliers shall destroy or return to Buyer all Technical Data and all Goods, as instructed by Buyer. With respect to Technical Data: (a) destruction applies to both physical and electronic copies of Technical Data, including archived copies, (b) destruction may include cross-cut shredding, burning or chemically reverting to pulp or other similar methods, which preclude use in full or partial form, and (c) electronic copies of Technical Data must be permanently deleted from all servers, systems and local devices. With respect to Goods: (x) destruction means the act of eliminating the functional capabilities, any offensive or defensive advantages or capability, and inherent military design features from Goods and rendering Goods useless beyond repair, rehabilitation, and restoration, destroying any recognition characteristics such as the Good's key points, original identity, utility, form, fit, function, and the removal of any unique identifiers including part numbers, serial numbers, and any accompanying data before being considered recyclable, waste, or discarded material, (y) methods and degree range from removal and destruction of critical features to total destruction by cutting, crushing, tearing, mangling, shredding, melting, burning, scrapping, or alteration, etc., and (z) destruction applies to Goods in both serviceable and unserviceable condition.
- 28.8 Required Notices. Supplier shall promptly notify Buyer if it becomes aware of any failure by Supplier or its suppliers to comply with this ITC Section and shall cooperate fully and promptly with Buyer in any investigation of such failure to comply. Supplier shall also promptly inform Buyer of any name change, address change or change in ownership or control of Supplier.

- 28.9 Technology Control Plan. When the terms of this Agreement require access to or possession of Technical Data controlled under the ITAR or at an anti-terrorism level or higher under the EAR, or the equivalent level of controls under applicable and governing non-U.S. export regulations, Supplier shall create and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) international trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) denied party screening as defined in this Section; and (vi) personnel oversight (including without limitation, oversight of non-U.S. persons, dual third country nationals, employees, and visitor management). Supplier shall make a signed copy of the TCP available to Buyer within 30 days of request.
- 28.10 This Section shall apply to transactions between Pratt & Whitney Canada (“P&WC”) and Supplier:
- 28.10.1 Supplier certifies that none of the Technical Data, Goods or Services subject to the Order are controlled by the ITAR. In making its classification, Supplier may assume, to the extent that P&WC is the design authority, the design is not ITAR-controlled, unless P&WC specifically indicates otherwise. Notwithstanding any other provision in the Agreement or the Order, no Technical Data, Goods or Services controlled under the ITAR shall be transferred to P&WC.
- 28.10.2 In the event that Supplier's Technical Data, Goods or Services are controlled under the ITAR other than as the sole and direct result of P&WC's design, act or omission, Supplier shall: (a) without delay, notify P&WC in writing and immediately cease all shipments of such ITAR-controlled Technical Data, Goods or Services until the necessary Authorizations are duly issued to Supplier (with a copy to P&WC) and P&WC's written consent for such shipments has been obtained; and (b) at its own cost, with no change in price and within a timeframe compatible with P&WC's business needs, replace or substitute the ITAR-controlled Technical Data, Goods or Services with a substitute that is not ITAR-controlled, while fulfilling all requirements under the Agreement or the Order.
- 28.11 Country of Origin.
- 28.11.1 “Country of Origin” shall mean either the country where a Good has been wholly obtained or, when more than one country is concerned in the production of the Good, the country where the last substantial transformation has been carried out. The Supplier shall identify the Country of Origin of all Goods on the commercial invoice or pro forma invoice accompanying the shipment, and in any other format as Buyer may direct, including but not limited to, electronic, and/or scan-readable format. Where the Supplier is not the manufacturer of the Good, it shall obtain the Country of Origin from the manufacturer of such Good.
- 28.11.2 Country of Origin Marking. Supplier shall mark all Goods with the English name of the Country of Origin in accordance with the local laws of the destination country. Where the Good is exempt from the Country of Origin marking requirements of the destination country or no such markings are otherwise required, Supplier shall mark the container of such Good with the name of the Country of Origin of the Good.

- 28.11.3 Preferential Treatment. Upon Buyer's request, Supplier shall provide, or assist in obtaining from its downstream suppliers, certificates of origin, declarations, and/or affidavits necessary to support Buyer's claims for duty-free or preferential duty treatment under international agreements, multi-lateral or bilateral free trade agreements, or other preferential tariff programs (e.g., Generalized System of Preferences, North American Free Trade Agreement (NAFTA), U.S.A. – Singapore Free Trade Agreement, U.S. Goods Returned, etc.). Supplier shall maintain and make available to Buyer all records supporting any certificates of origin, declarations, and/or affidavits provided to Buyer as support for Buyer's claim for duty free or preferential duty treatment for five years after the date on which the aforementioned document(s) were provided.
- 28.12 Importer Security Filing. For imports into the United States, Supplier shall provide Buyer or Buyer's designated agent in a timely fashion with all the data required to enable Buyer's compliance with the U.S. Customs' Importer Security Filing regulation, see 19 C.F.R. Part 149 (the "ISF Rule") for all of Supplier's ocean shipments of Goods to Buyer destined for or passing through a U.S. port. Supplier will provide Buyer or Buyer's designated agent with accurate "Data Elements" as defined in and required by the ISF Rule in a timely fashion to ensure Buyer or Buyer's designated agent has sufficient opportunity to comply with its filing obligations.
- 28.13 Duty Drawback. Supplier agrees to assign to Buyer any and all of Supplier's U.S. Customs duty drawback rights related to the Goods furnished hereunder in order for Buyer to seek duty drawback. Such duty drawback rights shall include rights developed by substitution and duty drawback rights obtained from sub-tier suppliers related to the Goods. Supplier agrees to inform Buyer of the existence of such duty drawback rights of which Supplier becomes aware. Supplier agrees to furnish upon request documents that Buyer reasonably requires, including, but not limited to, proof of importation and signed U.S. Customs Form 331 (Certificates of Manufacture), for Buyer to recover import duties related to the Goods. Supplier further agrees to provide such assistance to Buyer as requested in connection with the recovery of said import duties.
- 28.14 Security Programs. Suppliers and its sub-tier suppliers who either ship directly or package Goods for shipment shall comply with all requirements of the border security programs of the destination country (e.g. Customs Trade Partnership Against Terrorism (C-TPAT), Authorised Economic Operator (AEO), Partners in Protection (PIP), or similar).
- 28.15 Customs Documentation. Supplier shall provide complete and accurate customs documentation, including without limitation, documentation regarding entry requirements, classification, valuation, preferential treatment, duty drawback and trade terms.
- 28.16 Customs Brokers: With respect to pricing terms for any Order that includes Customs Brokerage Services, such services shall be quoted and charged at a fixed sum. In no event shall an Order for Customs Brokerage Services provide or allow for contingent or success fees. For purposes of this Agreement, "Customs Brokerage Services", shall mean Services whose performance shall involve transactions with customs officials or other government agencies to import goods into a country on behalf of Buyer pursuant to this Agreement. Customs Brokerage Services shall include, but are not limited to, preparation and submission of documents; classification and valuation of goods, as specifically authorized by Buyer; payment of duties, taxes or other charges; and clearance

of goods into the importing country in accordance with applicable government requirements.

- 28.17 Anti-Dumping/Countervailing Duties. Supplier shall inform Buyer of any applicable anti-dumping or countervailing duty, investigation and/or orders, and shall provide Buyer any documentation necessary to establish, where applicable, that imported Goods are outside the scope of the orders.

**29. 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, as applicable; (ii) a sole source of supply; or (iii) providing Goods and/or Services whose Lead Time exceeds 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 supply, design, development, certification, manufacture, sale, use and/or support of the Goods and/or Services furnished hereunder, in the event of a disaster or emergency. The Disaster Recovery Plan shall, among other things, prevent or limit the interruption of the supply of Goods and/or Services in conformity with the requirements set forth herein. Supplier shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

**30. Offset**

- 30.1 Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by 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.
- 30.2 Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods and/or Services supplied by Supplier to the value of the end item sold by Buyer into the particular country.
- 30.3 Upon Buyer's request Supplier shall (i) report all subcontract sources outside the United States utilized in the fulfillment of the 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.

**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. Subcontracting**

- 32.1 Any subcontracting by Supplier of all or substantially all of its responsibilities or obligations hereunder requires Buyer's prior written consent.

32.2 Any such subcontracting by Supplier 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 and/or Services 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 complies 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 ensure the relevant subcontracts contain provisions that comply in substance with the requirements set forth herein.

### **33. Change in Control or Grant of Security Interest**

33.1 For purposes of this Section 33:

“Change in Control” means and is deemed to have occurred if there is a change in the beneficial ownership of Supplier, either directly or indirectly, of twenty-five percent (25%) or more; provided, that, any change, of any amount, in the beneficial ownership of Supplier, either directly or indirectly, which involves a direct or indirect competitor of Buyer shall be deemed a change in control.

“Security Interest” means an interest in the assets of Supplier by any third party or parties, collectively, that accounts for a value equal to twenty-five percent (25%) or more of the Supplier's total assets, including without limitation, real property and the tangible or intangible personal property of the Supplier (including but not limited to interest in Supplier's tooling, fixtures, receivables and intellectual property rights).

33.2 Prior to a potential Change in Control of Supplier or grant of such a Security Interest by Supplier and at least ninety (90) days prior to the proposed effectiveness of such Change in Control or grant of Security Interest, Supplier will promptly notify Buyer in writing thereof (including the identity of and reasonable information regarding the potential third party or parties) and obtain Buyer's written consent prior to the effectiveness of such Change of Control or grant of Security Interest, consistent with applicable law and confidentiality restrictions. As a condition of granting such consent, Buyer shall have the right to (i) require Supplier to obtain a guarantee from the new controlling party or secured party or other adequate assurances of performance, as applicable, and (ii) extend the Term of this Agreement for up to an additional thirty six (36) months, under the pricing and other terms and conditions contained herein, by providing written notice thereof to Supplier. In the event such consent is not sought or obtained in accordance with the terms hereof, Buyer shall have the right to terminate the Order (including the Agreement), or any portion thereof, for default without a right to cure and without any liability or obligation whatsoever to Supplier for the portion terminated and Buyer's rights and remedies as set forth in the Section hereof entitled “Termination for Default” shall apply.

33.3 In addition, in the event Buyer grants its consent to a Change of Control or grant of Security Interest, Buyer shall have one hundred and eighty (180) days following its receipt of notice of the foregoing, to inform Supplier, upon thirty (30) days advance written notice,

of Buyer's intention to terminate the Order (including the Agreement), or any portion thereof, with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiration of such thirty (30) day period. If Buyer chooses to terminate the Order or Agreement under this provision and the remaining Term is in excess of six (6) months, Supplier shall, at no additional charge to Buyer, (a) provide Buyer with unrestricted access to all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier and necessary for the production of the Goods, (b) deliver or have unrestricted access to that tooling and test equipment necessary to make or have made the Goods, and (c) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with a 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; and assist and compensate Buyer for the costs associated with transitioning to another supplier or Buyer assuming the production of the Goods itself, protecting the tooling and other equipment necessary for production of the Goods, and taking other reasonable steps to ensure the Goods are produced without interruption according to Buyer's Specifications.

#### **34. 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 at each such time, or such longer period of time as may be required by Buyer's Customers ("Stop Work Period"). 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 may 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. If Buyer has not exercised its rights set forth in either (i) or (ii) above prior to the expiration of the Stop Work Period, then at least 30 days prior to said expiration, Supplier shall notify Buyer of its intent to resume work under the applicable Order and shall obtain Buyer's written consent prior to resuming work.

#### **35. Force Majeure**

- 35.1 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 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.
- 35.2 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's Customers.

**36. Duty to Proceed**

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

**37. Assurance of Performance**

Promptly upon Buyer's request, Supplier shall provide financial information to Buyer, including profit & loss, balance sheet and cash flow statements and loan documents. At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing the Order or Agreement, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request and Supplier shall provide written adequate assurances from Supplier of its ability, desire and intent to continue performing. Buyer will specify the nature of its concerns, and Supplier will provide Buyer with documents, financial data, or other information needed to satisfy Buyer's concerns including, but not limited to, audited financial statements including monthly profit & loss, balance sheet and cash flow, bank statements, accounts payable aging, profitability by part number including capital / productivity improvements. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Goods and/or Services without interruption in accordance with the Order or Agreement. In particular, Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the production of the Goods and/or performance of the Services itself, protecting the tooling and other equipment necessary for production of the Goods and/or performance of the Services, and taking other reasonable steps to ensure the Goods are produced and/or Services performed without interruption according to Buyer's Specifications. Buyer shall also have the right to require Supplier to (i) obtain a guarantee from the its controlling party or secured party, if applicable, and (ii) implement remedial actions directed by Buyer to improve Supplier's performance under the Order or Agreement.

**38. 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 or its Affiliates.

**39. Governing Law and Forum**

- 39.1 The Agreement and any 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 New York, USA without regard to conflicts of law principles, except that Sections 5-1401 and 5-1402 of the New York General Obligations law will apply and except that the United Nations Convention on Contracts for the International Sale of



Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in the appropriate court in Connecticut, 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. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of an Order or the Agreement.

- 39.2 Any action or claim by Supplier with respect hereto shall also be brought in Connecticut, 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 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 New York.

#### **40. Dispute Resolution**

- 40.1 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 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 30 calendar days of receipt of the request, vice presidents of each Party shall attempt to resolve the issue within 60 calendar days of receipt of such written request.
- 40.2 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.
- 40.3 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.

#### **41. U.S. Government Provisions for Orders under U.S. Government Contracts**

- 41.1 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/Suppliers/Pages/Terms-and-Conditions.aspx>

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. Buyer agrees to provide the new URL upon Supplier's request in the event of a change.

41.2 For work performed in the United States under Orders placed by U.S. 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.

**42. News Releases, Publicity and Other Disclosures**

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

**43. 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.

**44. Remedies**

Supplier shall be liable for any damages incurred by Buyer as a result of Supplier's acts or omissions under this Agreement. Except as expressly provided herein, 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.

**45. Partial Invalidity**

If in any instance any provision of this Agreement or 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 unless the purposes of the Agreement or Order can no longer be preserved by doing so. 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, to the extent permissible by applicable law.

**46. Survival**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement or any 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 this Agreement or any Order.

**47. No Waiver**

No failure of any Party to exercise any right under, or to require compliance with, the Agreement or Order, or knowledge of past performance at variance with the Agreement or 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.

**48. Relationship of the Parties**

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

**49. Captions**

The captions, headings, section numbers, and table of contents appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

**50. Interpretation**

This Agreement shall be construed as if drafted jointly by the parties and no provision in this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**51. No Conflicts**

None of the provisions of this Agreement or the Order, nor the Supplier's performance hereof contravenes or is in conflict with any law, judgment, decree, order, or regulation of any governmental authority, or with any obligations owed to any other entity to which the Supplier or any others used by the Supplier are subject.

**52. Order of Precedence**

The order of precedence provision in 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 the Agreement under which the Order is issued; and (iv) these Terms and Conditions.