

**UNITED TECHNOLOGIES CORPORATION  
STANDARD TERMS AND CONDITIONS OF PURCHASE  
FOR COMMERCIAL SUPPLIERS (PWR GP-2)  
(Fixed Priced Contract)**

**ADAPTED FOR PRATT & WHITNEY ROCKETDYNE**

**November 2008 Version**

**DEFINITIONS**

**Agreement:** shall mean these Terms and Conditions together with the Order pursuant to which goods or services are being provided and all documents specifically referenced herein or in such Order.

**Buyer:** shall mean the Pratt & Whitney Rocketdyne affiliated entity issuing the Order.

**Buyer Affiliated Companies:** refers to Pratt & Whitney Rocketdyne, Inc., United Technologies Corporation, and their respective divisions and subsidiaries.

**Deliverables:** shall mean Goods and/or Services depending on the context.

**Goods:** shall mean materials or products described in Orders, the purchase of which is governed by the terms of this Agreement.

**Intellectual Property:** means conceptions, ideas, innovations, discoveries, inventions, processes, materials, machines, formulae, equipment, improvements, enhancements, modifications, technological developments, know-how, show-how, methods, techniques, systems, designs, production systems and plans, software, documentation, data, programs and information and works of authorship, whether or not patentable, copyrightable, or susceptible to any other form of legal protection.

**Order:** shall mean a document, electronic or hard copy, issued by Buyer to Seller, in the form of a purchase order or release or similar document, referring to this Agreement and ordering Deliverables.

**"Proprietary Information"** means non-public proprietary data, information, or Intellectual Property (and all tangible and intangible embodiments thereof), which is controlled by a Party and is disclosed by such Party (Disclosing Party) to the other Party (Receiving Party) pursuant to this Agreement. Proprietary Information will not include data, information, or technology which, and only to the extent, a Receiving Party can establish by written -documentation:

- (a) is part of the public domain prior to disclosure of such information by the Disclosing Party to the Receiving Party or becomes part of the public domain, without the fault of the Receiving Party, subsequent to disclosure of such information by the Disclosing Party to the Receiving Party;
- (b) has been received by the Receiving Party at any time from a source, other than the Disclosing Party, rightfully having possession of and the right to disclose such information free of confidentiality obligations;
- (c) has been otherwise known by the Receiving Party free of confidentiality obligations prior to disclosure of such information by the Disclosing Party to the Receiving Party;
- (d) has been independently developed by employees or others on behalf of the Receiving Party without access to or use of such information disclosed by the Disclosing Party to the Receiving Party.

Specific aspects or details of Proprietary Information will not be deemed to be within the public knowledge or in the prior possession of the Receiving Party merely because the aspects or details of the Proprietary Information are embraced by general disclosures in the public domain. In addition, any combination of Proprietary Information will not be considered in the public knowledge or in the prior possession of the Receiving Party merely because individual elements thereof are in the public domain or in the prior possession of the Receiving Party unless the combination and its principles are in the public knowledge or in the prior possession of the Receiving Party. Further, Proprietary Information will include Proprietary Information received by the Disclosing Party from a Third Party. Prior to disclosure of such Third Party Proprietary Information to the Receiving Party, the Disclosing Party will determine that it has the right to make such disclosure, advise the Receiving Party that the disclosure includes Third Party Proprietary Information, and provide the Receiving Party with the terms and conditions of any agreement between the Third Party and the Disclosing Party respecting such Third Party Proprietary Information

**Seller:** shall mean the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

**Services:** shall mean services (whether or not ancillary to a sale of Goods) described in Orders, the purchase of which is governed by the terms of this Agreement.

**Terms and Conditions:** shall mean these Standard Terms and Conditions of Purchase.

**ARTICLE 1 - SCOPE OF THE AGREEMENT**

- 1.1 **Acceptance.** If for any reason Seller fails to accept this Agreement in writing or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Goods (or lots thereof) ordered hereby, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Seller of this Agreement and all the terms and conditions hereof.
- 1.2 **Additional Terms Proposed by Seller.** Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of Seller.
- 1.3 **Buyer's Terms & Conditions.** If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledge that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and

acknowledged unless Seller notifies Buyer to the contrary in writing within 10 days of receipt of the relevant Order.

- 1.4 **Compliance.** Seller shall comply with all purchasing notes, drawings and specifications contained, specified and/or referenced in the Agreement, and with descriptions and specifications contained in Seller's literature or proposal, to the extent consistent with the Agreement and beneficial to Buyer.

## ARTICLE 2 - PRIME OR CUSTOMER CONTRACT REQUIREMENTS

- 2.1 When Seller's work hereunder will form a part of the work, whether Goods or Services, under a contract that Buyer has with another or others, Seller agrees, by its acceptance hereof, to be bound to Buyer in the same manner and to the same extent that Buyer is bound to its customer. Seller further agrees that Buyer's contract with its customer is incorporated herein and forms an integral part of this Agreement and that it has examined the drawings, specifications, terms and conditions of such contract and that it will be bound by such drawings, specifications, terms and conditions. Access to all such documentation will be provided to Seller upon request.

## ARTICLE 3 - PRICE AND PAYMENT

- 3.1 **Payment terms.** Payment terms will be net 60 days, unless other payment terms are expressly authorized on the face of the Order, following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement.
- 3.2 **Agreed Price.** Seller warrants that the agreed price for the Deliverables is not less favorable than that currently extended to any other buyer for the same or like Deliverables in similar quantities.
- 3.3 **Invoices.** All invoices must contain the following information: purchase order number, item number, description of items, quantities, unit prices, and taxes. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this Agreement. Buyer or any Buyer Affiliated Companies may set off any amount owed by Seller or any of its affiliated companies to Buyer or any of its affiliated companies against any amount owed by Buyer hereunder. In accordance with U.S. Bureau of Customs and Border Protection ("CBP") Regulations — 19 CFR 141.81, a commercial invoice will be presented with each merchandise shipment entering the U.S. Such invoice shall be prepared in the English language (or an English translation attached thereto), in accordance with 19 CFR 141.86-141.89.
- 3.4 **Late Invoices.** Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than 12 months after the receipt of the Deliverable.

## ARTICLE 4 - TAXES

- 4.1 **Tax Liability.** Seller shall properly impose upon, collect and remit from Buyer any and all sales, use, excise, transaction and value added taxes, customs, duties, contributions, or similar

levies by taxing jurisdictions as required by law ("Taxes") that are imposed by any government Tax authority ("Tax Authority") upon Buyer's payments pursuant to this Agreement, and are the legal obligation of the Buyer. Each of the Taxes shall be separately stated on all applicable Seller invoices.

- 4.2 **Tax Exceptions.** No Taxes, interest, penalties, or other additions to Taxes, shall be collected by Seller if, pursuant to this Agreement or the laws of the applicable Tax Authority, (a) the transaction is not subject to Taxes; (b) Buyer has been authorized to pay Taxes directly to the appropriate Tax Authority; or (c) Seller is obligated to pay the Taxes. Seller shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.
- 4.3 **Tax Refund and Indemnification.** If Seller receives a refund of any Taxes attributable to Buyer, Seller shall pay such amount to Buyer within 30 days of receipt. Seller shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Seller's violation of its obligations under this section.

## ARTICLE 5 - DELIVERY

- 5.1 **Time of Delivery.** Seller shall furnish the items called for by this Agreement in accordance with the delivery terms stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment or return at Seller's expense, any Deliverables delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.
- 5.2 **Delivery Terms.** Unless otherwise expressly set forth in the Order, the delivery terms for Goods shall be: DDP Buyer's facility Incoterms 2000 provided that Seller shall be responsible for unloading of the Goods in accordance with Buyer's instructions and the risk of unloading will be that of Seller. As consistent with this delivery term, standard delivery instructions of the relevant procurement department apply and may be obtained through the relevant Buyer procurement representative. Title shall pass to Buyer on delivery of Goods as provided in this section. If delivery is required to be made to a third party (drop shipment), title and risk of loss shall pass to Buyer when delivered at the consignee's facility.
- 5.3 **Notice of Delay.** Whenever an actual or potential reason for delay (including but not limited to labor disputes), delays or threatens to delay the timely performance of the Order, Seller agrees to immediately notify Buyer in writing of all relevant information and, subject to the force majeure provision set forth herein, to make and pay for all necessary changes to fulfill its obligations under the Order and mitigate the potential impact of any such delay. Buyer has the right without incurring any liability to cancel any Deliverables affected by the delay in performance.
- 5.4 **Cessation of Production.** Seller shall give Buyer immediate written notice of any plans for the permanent discontinuance of

production of items covered by Orders. Compliance with this provision shall in no way relieve the Seller from its obligations under the Order.

- 5.5 **Packing.** Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same container, material that is to be delivered to different receiving locations. Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number and applicable purchase order number. Packaging and preservation must be adequate to protect parts and materials subjected to normal handling during shipment. Containers, whether of wood, cardboard, plastic or other material, must be of sufficient rated strength for the weight and type of goods being shipped. Filler material is to be used within containers when shifting of materials within the container could cause damage to materials. Exterior strapping shall be used when parts, products, material or machinery is of such a size or weight that packaging is impractical. Shipments which require special handling because materials are of a fragile nature, require only an upright position, or present hazards to safety shall be so marked. Desiccants and preservatives shall only be used in accordance with material handling procedures accepted by the industry. In packaging the deliverables Seller must comply with the requirements of ASTM D3951 as well as any "Green Packaging" specifications provided by Buyer.
- 5.6 **Marking.** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (1) Address of Buyer site and Seller; (2) Order number; (3) Part number; (4) Special markings called for on the Order; (5) Quantity; and (6) (where applicable) Vendor Code or other vendor identification number. In accordance with CBP Regulations 19 CFR 134, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or its container will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.
- 5.7 **Bills of Lading.** Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.
- 5.8 **Shipping and Approved Carriers.** On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Goods shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Goods shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer approved carriers.

## ARTICLE 6 - INSPECTION, ACCEPTANCE, & REJECTION

- 6.1 **Inspection by Buyer.** All Deliverables being provided to Buyer's specifications covered by the Order may be inspected and tested by Buyer or its designee, at all reasonable times and places, including during manufacture. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests.
- 6.2 **Inspection Records.** All inspection records relating to Deliverables covered by the Order and being manufactured to Buyer's specifications and/or drawings shall be available to Buyer during the performance of the Order and for such longer periods as specified by Buyer.
- 6.3 **Defects.** Deliverables furnished hereunder shall have zero defects, and Seller has the obligation to properly inspect such items prior to delivery to Buyer. If any Deliverables covered by the Order are defective or otherwise not in conformity with the requirements of the Order, Buyer may, (i) rescind the Order as to such Deliverables, and rescind the entire Agreement if such defect or non-conformity materially affects Buyer; (ii) accept such Deliverables at an equitable reduction in price; or (iii) reject such Deliverables and require the immediate delivery of replacements. If Buyer requires the delivery of replacements, then, upon Buyer's notification of any nonconforming Deliverables, Buyer shall require Seller to perform a root cause and corrective action analysis on the nonconformance of Deliverables as follows: Seller shall: within seven days from Buyer's notice, fully investigate the nonconformity and its root causes, deliver to Buyer a written report of its investigation and its conclusions as to the root causes, and meet with Buyer to formulate a corrective action plan, and within 14 days after providing Buyer the results of Seller's investigation, implement the corrective action plan, including any corrective action recommended by the Buyer, and eliminate the root cause of the nonconformity. If nonconforming Deliverables are received and Seller fault is found and corrective actions are not taken, Buyer may charge supplier an administration fee of \$1,000 per nonconforming occurrence. If Seller fails to deliver required replacements promptly, Buyer may (i) replace, obtain or correct such Deliverables and charge Seller the cost occasioned Buyer thereby, and/or (ii) terminate the Order for cause. Nothing set forth herein shall limit Buyer's right to pursue any remedy available at law or in equity in the event of Seller's default.
- 6.4 **Rejection.** Rejected Deliverables may be returned to Seller at Seller's cost.

## ARTICLE 7 - C-TPAT PROGRAM

(Only applicable to Orders in which Goods will be shipped into the United States)

- 7.1 **Compliance with C-TPAT Program.** The U.S. Bureau of Customs and Border Protection has created the Customs Trade Partnership Against Terrorism ("C-TPAT") program in which the Government and business will work to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore for delivery into the United States. Buyer is committed to be in full compliance with the C-TPAT program and requires its suppliers to comply.

- 7.2 **Shipment & Documentation.** Supplier agrees that during the period in which it ships goods to Buyer, it and its subcontractors who either ship directly or package goods for shipment will either (i) be certified under the C-TPAT program by the U.S. Bureau of Customs and Border Protection or (ii) demonstrate to Buyer's satisfaction that it meets the security requirements of C-TPAT. Accordingly, Supplier must either provide Buyer with documentation that it and such subcontractors are certified (e.g. – C-TPAT certification or Status Verification Interface (SVI) number) or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with C-TPAT security requirements. C-TPAT requirements can be found at [www.cbp.gov](http://www.cbp.gov).
- 7.3 **Audit & Inspection.** Upon five days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Supplier and its subcontractors, and make reasonable inspection of Supplier's and its subcontractor's premises, in order to verify compliance with the requirements of this provision.
- 7.4 **Non-Compliance.** Any delay in delivery due to Supplier's failure to comply with this provision shall not relieve Supplier of its obligations and shall not constitute a force majeure or give rise to an excusable delay.

#### ARTICLE 8 - CHANGE ORDERS

- 8.1 **Issuance of Change Orders.** Buyer shall have the right at any time prior to the Delivery Date of Deliverables to make changes in drawings, designs, specifications, packaging, place of delivery, nature and duration of Services, and method of transportation, or require additional or diminished work. Seller shall comply immediately with such direction.
- 8.2 **Equitable Adjustments.** If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affects any other provision of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within 30 days from the date Seller receives the change order.

#### ARTICLE 9 - BUYER'S PROPERTY

- 9.1 **Use of Buyer's Property.** All tools, including durable and special tooling, equipment dies, gauges, models, drawings or other materials furnished by Buyer to Seller ("Buyer Furnished Items") or made by Seller for the purpose of this Agreement or paid for by Buyer ("Buyer Funded Items") and all replacements thereof and materials attached thereto (collectively, "Buyer's Property"), shall be and remain the property of Buyer, subject to repossession by Buyer at its option. All Buyer's Property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Seller as being Buyer's Property, will at Seller's expense be safely stored (separate and apart from Seller's property whenever practicable) and maintained and will be kept free of all liens, claims, encumbrances and interests of third parties. Seller shall be responsible for risk of loss of and damage to Buyer's

Property when in Seller's possession. Seller will not substitute any property for Buyer's Property, and when a Buyer Furnished Item is classified as a material for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall Seller alter the physical or chemical properties of the material except with Buyer's written approval. Seller will not deliver or make available to any third party any of Buyer's Property or any property or goods developed, manufactured or created with the aid of any of Buyer's Property and will not use, transfer, copy or duplicate any of Buyer's Property or any property or goods manufactured, developed or created with the aid of Buyer's Property, except in fulfilling the Order of Buyer (or other purchase orders between the parties, if agreed to by the parties). Upon completion by Seller of the Order, or upon the written request of Buyer at any time, Seller will prepare all Buyer's Property for shipment and deliver such Buyer's Property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times, upon prior notice to enter Seller's premises to inspect any and all Buyer's Property and any property or goods manufactured, developed or created with the aid of any Buyer's Property. Should Seller be unable to deliver Goods pursuant to this Agreement, Buyer, by written notice, may vest in itself title to finished parts, raw materials or work in process associated with this Agreement, and Seller shall deliver all such material and other Buyer's Property to such location or locations outside its facility as may be designated by Buyer.

- 9.2 **Buyer-Funded Tooling.** Seller guarantees that Buyer Funded Items classified as tooling, including durable and special tooling, ("Buyer-Funded Tooling") shall produce the number of parts that are specified in the purchasing documentation. Seller is responsible for repair, refurbishment or replacement of any Buyer-Funded Tooling not meeting this guarantee.
- 9.3 **Government-Furnished Tooling.** Seller may not use government-furnished tooling that is not provided to Seller under this Order for performance of this Order unless Seller has the written permission of Buyer.
- 9.4 **Maintenance & Repair of Buyer's Tooling.** While Buyer's Property classified as tooling (including durable and special tooling) is in Seller's control, Seller shall, at its own expense, establish and follow a maintenance and repair program for such tooling in order that the tooling will be in a condition to manufacture parts in accordance with applicable specifications including: (i) replacing missing or damaged pins, cables, bushings, screws, nut, bolts, clamps, jack screws, washers, vacuum bags, caul plates, locators, form block backing plates, and miscellaneous hardware, (ii) repairing mold and bonding fixture and form block surface imperfections, (iii) re-inking and sealing molds, replacing rubber molds for bonding fixtures and (iv) general cleaning, plating, and painting. Seller shall, at the earliest possible time, provide written notice to Buyer of tooling that requires major refurbishment or replacement and Seller and Buyer shall negotiate and agree to the terms thereof.

#### ARTICLE 10 - PROPRIETARY INFORMATION AND PUBLICITY

- 10.1 **Use & Disclosure of Proprietary Information.** Proprietary Information, including Proprietary Information received prior to

the execution or approval of an Order, shall be used by Seller solely for the purposes of the current business relationship with Buyer or evaluating the feasibility of a future business relationship with Buyer and shall not be used for any other purpose including without limitation to design, manufacture, repair or service equipment, to provide or sell services or to seek any government or third party approval to do such. Seller shall not disclose Proprietary Information to any third party without Buyer's express written consent. Seller may disclose the Proprietary Information to contract workers, consultants and agents of Seller who have a need to know and who have executed agreements with Seller obligating them to treat such Proprietary Information in a manner consistent with the terms of this Agreement.

- 10.2 **Protection of Proprietary Information.** Seller shall maintain all Proprietary Information received in strict confidence and shall safeguard the Proprietary Information by using all reasonable efforts to prevent its disclosure to or use by third parties other than as this Agreement permits. Seller shall not reverse engineer, reverse assemble, or decompile Proprietary Information.
- 10.3 **Required Disclosures.** If Seller is required to disclose Proprietary Information pursuant to governmental or judicial process, notice of such process shall be promptly provided to Buyer to allow Buyer to intercede in such process to contest such disclosure, and Seller will cooperate with Buyer to protect the Proprietary Information from further disclosure.
- 10.4 **Return of Proprietary Information.** Upon expiration or termination of this Agreement for any reason whatsoever, Seller shall promptly return to Buyer or otherwise dispose of at Buyer's direction, all Proprietary Information.
- 10.5 **Period of Protection.** Obligations in this section regarding Proprietary Information shall, with respect to each disclosure of Proprietary Information hereunder, continue for 10 years from the date of such disclosure or 10 years after termination of this Agreement whichever is later.
- 10.6 **Publicity.** Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Agreement or which shall make use of Buyer's name or logo without the prior written consent of Buyer, except as may be reasonably required to perform this Agreement.

#### ARTICLE 11 - INTELLECTUAL PROPERTY

- 11.1 **Grant of Rights.** Seller shall promptly disclose in writing to Buyer all Intellectual Property conceived or first reduced to practice or created in the performance of this Agreement. Seller (i) agrees that any works of authorship created in the course of this Agreement by Seller that come under any one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered a "Work Made for Hire", and (ii) agrees that for any works of authorship that do not come under such categories, Seller hereby assigns to Buyer all right, title, and interest it has to any copyright in such works. Seller hereby irrevocably waives all "moral rights", all rights of privacy and publicity, and the like, in all materials provided to Buyer. In addition to the foregoing, and to the extent permissible by law, Seller, hereby irrevocably assigns and hereby agrees to assign

to Buyer all right, title and interest to all Intellectual Property conceived or first reduced to practice or created by Seller, any employees or any others used by Seller, in the performance of this Agreement.

- 11.2 **Grant of License Rights.** To the extent Buyer does not otherwise have the right(s) under this Agreement, Seller hereby grants to Buyer worldwide, nonexclusive, perpetual, fully-paid, irrevocable, transferable licenses (with rights to grant sublicenses) to (i) make, have made, use, offer for sale, sell, import, (ii) copy, distribute, publicly display, publicly perform, make derivative works, embed, operate, install, maintain, repair, and otherwise freely exploit in connection with the Deliverables and similar, related or integrated goods or services, all Intellectual Property which Seller provides or has provided to Buyer either during the term of or prior to the effective date of this Agreement, in any and all media now known or later developed.
- 11.3 **Work Product.** The tangible and intangible work product developed under this Agreement, whether or not delivered under this Agreement, including, but not limited to, all analyses, recommendations, reports, and memoranda, shall become the property of Buyer.
- 11.4 **Cooperation.** Seller will cooperate fully and will execute or cause to be executed any documents required to establish, defend and enforce Buyer's Intellectual Property rights under this Agreement.
- 11.5 **Warranty of Title to Intellectual Property.** Seller agrees, warrants, and represents to Buyer that, to its knowledge (i) Buyer shall acquire good and clear title to the Intellectual Property, that (ii) Seller has all rights and authority to perform its obligations under this section regarding Intellectual Property, or that the Intellectual Property is in the public domain, and the use thereof by Buyer, its representatives, distributors, dealers, end users, and other direct and indirect customers does not and shall not infringe any proprietary rights of any third party. As of the date of this Agreement, Seller represents that it has not received any notice or claim alleging that the Intellectual Property or Deliverables or any portion thereof, infringes any proprietary rights of a third party.

#### ARTICLE 12 - WARRANTIES

- 12.1 **Scope of Warranties.** In addition to any warranty implied by fact or law Seller expressly covenants and warrants that all Deliverables shall conform to the specifications, drawings, samples or other description upon which the Order is based, shall be suitable for the purpose intended, merchantable, free from defects in material and workmanship, and free from liens, or encumbrances of title, and that Deliverables of Seller's design will be free from defect in design. Inspection, test, acceptance, payment for, or use of Deliverables furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller further warrants that all work will be performed in a professional manner in accordance with applicable safety standards of any applicable governmental and the highest industry codes and standards and ethical standards. Any warranties associated with this Order shall run

to Buyer, its successors, assigns, customers, Buyer Associated Companies, and the users of the Deliverables.

- 12.2 **Replacement/Correction.** Seller agrees to replace or correct defects of any Deliverables not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, and such replacement Deliverables shall be accompanied by a written notice specifying that such Deliverables are corrected or replaced. In the event of failure by Seller to correct defects in or replace nonconforming Deliverables promptly, Buyer, after reasonable notice to Seller, may make such correction or replace such Deliverables and charge Seller for the cost incurred by Buyer thereby.
- 12.3 **Remedies.** Buyer's remedies with respect to this warranty shall not be limited, restricted or disclaimed in whole or part by any other provision of this Order.

### ARTICLE 13 - INSURANCE

- 13.1 **Required Coverages.** These insurance provisions shall apply unless otherwise expressly stated on the face of the Order. Without limiting Seller's duty to defend, hold harmless and indemnify hereunder, Seller agrees to secure and carry as a minimum during the entire term of this Agreement and any Order, the following insurance:
- (a) 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 amount of \$1,000,000 for any one occurrence;
  - (b) General Liability Insurance including Premises 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, unless some other amount is agreed to in writing;
  - (c) If Seller vehicles are used on Buyer's premises and/or used to accomplish work under this Agreement or an 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;
  - (d) If Seller or its subcontractors have Buyer's materials or equipment in its care, custody or control, Seller shall maintain All Risk Property Insurance in an amount sufficient to meet or exceed the replacement value of such material; and
  - (e) If Seller is performing professional services on behalf of Buyer, Seller shall maintain Professional Liability Insurance with a limit of not less than \$5,000,000, unless some other amount is agreed to in writing.
- 13.2 **Approved Insurance Providers.** All such insurance shall be issued by companies authorized to do business under the laws of the 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 by another rating agency acceptable to Buyer.

- 13.3 **Form of Coverage.** The insurance coverage described above shall be in a form satisfactory to Buyer. All such insurance policies will be primary in the event of a loss arising out of Seller'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 Buyer as an additional insured or, in the case of All Risk Property Insurance, naming Seller and Buyer as loss payees, shall be provided to Buyer upon execution of this Agreement and before commencement of any work hereunder, and within a reasonable time after any changes to such policies are issued. To the extent permitted by law, Seller and its insurer(s) agree that subrogation rights against Buyer are hereby waived. Seller shall reflect such waiver in any policy(s) required under this Agreement and shall advise the amount of available policy limits as of execution of this Agreement and shall identify the amounts of any self-insured retention.
- 13.4 **Certificate of Insurance.** 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 Seller, its employees, invitees or agents under the Agreement and that such insurance shall not be invalidated by any act or neglect of Seller whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.
- 13.5 **Cancellation or Material Modification.** Seller shall provide written notice to Buyer at least 10 days prior to the cancellation or material modification of any insurance policy associated with the work performed under this Order. For the purposes of this provision, a material modification occurs when modification of an insurance policy associated with the work performed by Seller under this results in coverage at levels below those required by this Order.
- 13.6 **Subcontracts.** Seller agrees to insert the applicable substance of this provision in all major subcontracts entered into by Seller to support work performed under the Order.

### ARTICLE 14 - INDEMNIFICATION

- 14.1 **Indemnification Requirements.** Seller shall indemnify, protect, defend and hold harmless the Buyer, its officers, directors and Buyer Affiliated Companies and their officers and directors from all suits, proceedings, investigations, claims, losses, damages, injuries, costs or expenses (including attorneys' fees) (hereinafter referred to collectively as "Claims") (i) arising out of, or caused by, Seller's performance hereof or any defects in the Deliverables or (ii) arising from any threatened, pending, completed or future Claim alleging that any manufacture, use, sale or offer for sale of the Deliverables associated with this Order infringe any patent, trademark, copyright, or alleging any other violation of an Intellectual Property right; except and to the extent that such alleged infringement arises directly from Seller's compliance with designs furnished by Buyer. In the event and to the extent

Seller's compliance as set forth in this paragraph shall form the basis of any claim, suit or action for infringement against Seller. Buyer shall indemnify Seller as set forth below.

- 14.2 **Defense of Claims.** A party required to indemnify another under this Article shall promptly assume and diligently conduct the entire defense of such alleged Claims at its own expense, provided that such party receives prompt written notice of such claim, suit, or action as such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such Claim, and (ii) with permission of the court, to intervene in any such suit or action. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in seminal the strategy to defend any such Claim. Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such Claim and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from its obligation to pay for attorneys' fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any Claim.

#### ARTICLE 15 - ENVIRONMENT, HEALTH, AND SAFETY

- 15.1 **Test Reports.** Any Seller test reports or other test results related to the Deliverables shall be provided to Buyer as set forth in the terms of the Order, or if not specified in the Order terms, upon Buyer's request.
- 15.2 **Compliance Requirements.** Seller agrees to comply with Buyer's environment, health and safety standards during Seller's performance hereunder and when at Buyer's jobsites, including without limitation, Buyer's jobsite safety rules; and if Seller is unable or unwilling to comply with such requirements, the Order can be withdrawn without further recourse by Seller. Specifically, and without limitation, Seller agrees to: (1) Comply with the applicable national, state, provincial or local environmental, occupational health and/or safety legislation or regulations. (2) Supply to employees and require that all employees wear specified safety equipment, including but not limited to eye protection and foot protection. (3) Adhere to all Buyer's safety requirements and instructions as indicated by Buyer or Buyer's representatives including without limitation, if Seller will be performing Services within Buyer's facilities, the compliance requirements and restrictions applicable to Services performed within Buyer's facilities. (4) Immediately prior to commencement of any work or service, contact a responsible Buyer representative. (5) Submit the Workers' Compensation Board Firm Number to Buyer's safety office. (6) Require its suppliers to agree to the requirements of this section and the section of this Agreement entitled "Compliance with Laws".
- 15.3 **Use of Hazardous Substances.** Seller 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 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, Seller 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 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.

#### ARTICLE 16 - TERMINATION

- 16.1 **Termination for Convenience.** Buyer may terminate, for its convenience, all or any part of this Agreement at any time by written notice to Seller. In such case Buyer's sole obligation will be to pay for completed Deliverables that are delivered to Buyer. Notwithstanding anything to the contrary in the previous sentence, Buyer will not be obliged to pay for any Deliverables in excess of that which would be delivered to Buyer in the "Lead Time Period" of the Order. The "Lead Time Period" for each terminated Deliverable will commence on receipt of Buyer's notice of termination and end upon the expiration of the lead-time specified for a Deliverable. If no lead-time is specified for a Deliverable, the lead-time will be a reasonable average actual leadtime under normal delivery circumstances for that Deliverable. In no event shall costs associated with, or anticipated profit or overhead, on unperformed work be payable to Seller.
- 16.2 **Termination for Default.** If (i) Seller fails to make any delivery or perform Services in accordance with Delivery Dates or otherwise fails to comply with the Order and does not remedy such failure within a reasonable time after receipt of written notice thereof, (ii) Seller fails to make progress to such an extent that performance of the Order is endangered, (iii) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment for the benefit of creditors, or (iv) Seller commits any other breach of this Agreement, Buyer may (in addition to any other right or remedy provided by this Agreement or by law) terminate all or any part of this Agreement by written notice to Seller without any liability and may purchase substitute goods and services elsewhere. Seller shall be liable to Buyer for any cost occasioned Buyer thereby. Buyer also may require Seller to transfer title and deliver to Buyer any completed supplies, and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this Agreement and any technology or information necessary for production of Deliverables. If a court of competent jurisdiction finds that any termination for cause was wrongful, then such termination shall be automatically converted to a termination for convenience and the rights and obligations of the parties will be as set forth in the section hereof titled "Termination for Convenience". The parties agree that the provisions of this Default section shall not apply to failures or delays in making deliveries of Deliverables

when such failure or delay is due to any cause beyond the control and without the fault or negligence of Seller as provided in the force majeure provision set forth herein; provided, however, that Buyer may cancel without liability to Seller its purchase of any such items.

- 16.3 **Excessive Stock.** To avoid excessive stocks of fabricated parts in the event of a reduction or termination of this Order, Seller shall manufacture only sufficiently in advance of the schedule associated with this Order to meet the deliveries required by such schedule, unless expressly permitted to exceed that schedule by Buyer.
- 16.4 **Excessive Raw Material.** Seller agrees it is responsible for its own raw material supplies and Buyer shall not be billed for such supplies upon the cancellation of this Order or any other reasons.
- 16.5 **Termination Claims.** Any settlement claim by Seller in connection with Buyer's termination for convenience shall be subject to this Agreement and Buyer's policies on purchase order terminations.

#### ARTICLE 17 - ASSIGNMENT

- 17.1 **Assignment of Interest.** Neither this Agreement nor any interest hereunder shall be assignable by either party unless such assignment is mutually agreed to in writing by the parties hereto; provided, however, that Buyer may assign this Agreement to any corporation with which Buyer may merge or consolidate or to which Buyer may assign substantially all of its assets or that portion of its business to which this Order pertains or to any third party provider of "integrated services" that will purchase the Deliverables for Buyer's benefit without obtaining the agreement of Seller.
- 17.2 **Subcontracting.** Seller shall not subcontract any work called for by this Order without Buyer's prior written approval.
- 17.3 **Assignment of Money Due to Seller.** Claims for money due or to become due to Seller from Buyer arising out of this Agreement may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this Agreement and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.

#### ARTICLE 18 - LEGAL COMPLIANCE

- 18.1 **Permits & Licenses.** Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to

review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

- 18.2 **Compliance with Laws.** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, including those pertaining to United States Export Controls (hereinafter collectively referred to as "Laws"). Seller shall timely furnish to Buyer any and all certificates or other documents required to prove compliance with such Laws.
- 18.3 **Ineligible Parties.** Seller warrants that it has complied with all laws, ordinances, rules, and regulations designating certain parties as "denied", "restricted" or similarly ineligible to do business with U.S. entities.
- 18.4 **Gratuities:** Seller has not and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- 18.5 **Debarment.** Seller shall notify Buyer promptly if Seller is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or (ii) listed or is proposed to be listed by the U.S. Government in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist" for U.S. export administration purposes (collectively, "Debarment"). Seller shall indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of Seller's Debarment;
- 18.6 **MBE/WBE.** For work performed in the United States, Seller 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 sellers may be negotiated as part of this Order. If Seller is a minority owned business enterprise or a women owned business enterprise, Seller shall provide upon request a current certificate on an annual basis and promptly notify Buyer if such status is lost.

#### ARTICLE 19 - AUDIT RIGHTS

- 19.1 Seller agrees to keep or cause to be kept, in accordance with good accounting practice, books, records and accounts covering its operations hereunder and containing all information necessary for the accurate determination of costs or compliance with the obligations of this Order. Seller agrees to make available for inspection and copying at reasonable intervals such books, records and accounts and to provide access by Buyer to Seller's knowledgeable personnel as may be necessary to determine the completeness and accuracy of costs or expenses for which Seller is seeking payment or reimbursement from Buyer.

#### ARTICLE 20 - FORCE MAJEURE AND DISASTER RECOVERY

- 20.1 **Force Majeure & Recovery.** Neither Seller nor any Buyer shall be liable for damages for any failure or delay in the performance of this Agreement or any Order resulting from

causes beyond its reasonable control including, but not limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, and labor strikes. Buyer may cancel without liability to Seller its purchase of any Deliverables affected by Seller's failure or delay in performance. The party incurring the delay shall give timely notice to the others of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. If requested by Buyer, the parties shall jointly prepare a contingency plan to address the potential impact of any such event.

- 20.2 **Disaster Recovery Plan.** Seller that is: (i) a sole source of supply; or (ii) providing Deliverables whose lead-time exceeds one hundred twenty (120) days, shall develop and maintain a Disaster Recovery Plan. The said plan must include UTCL1 - 91098 version 3 strategy and actions for recovery and continuation of business, related to production of Seller's Deliverables furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of Deliverables. Seller shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

#### ARTICLE 21 - DISPUTES AND CHOICE OF LAW

- 21.1 **Disputes.** Both parties agree that they will endeavor to resolve any disputes arising from or related to this Order amicably through discussions with each other; and that prior to either party filing legal action against the other (except for equitable actions that may be necessary to protect a party's rights), they will enter into informal settlement discussions between senior management personnel of each party. Any dispute that arises under or is related to this contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction in the State of California. Seller 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. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
- 21.2 **Choice of Law.** This Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of California, USA without regard to conflicts of law principles.
- 21.3 **Disclaimer.** The parties specifically disclaim application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

#### ARTICLE 22 - MISCELLANEOUS

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

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

- 22.2 **Independent Contractor.** Seller shall perform the services required under this Order as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, state and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security and/or similar or related protection for such persons, as required by applicable law.
- 22.3 **Offset Credits.** To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits which might result from this contract. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits. Seller agrees to use reasonable efforts to identify the foreign content of goods that Seller either produces itself or procures from subcontractors for work directly related to this contract. Promptly after selection of a non-U.S. subcontractor for work under this contract, Seller shall notify Buyer of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.
- 22.4 **Access to Plants & Properties.** Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.
- 22.5 **Survival.** All obligations and duties under any provisions, which by their nature extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including protection of proprietary information) shall survive the expiration or other termination of this Agreement of which these provisions are made a part.
- 22.6 **Waiver.** Buyer's failure to seek a remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type. Acceptance of any Deliverables or payment therefore shall not waive any breach.
- 22.7 **Remedies.** Seller shall be liable for any damages incurred by Buyer as a result of Seller's acts or omissions under this Agreement. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.
- 22.8 **Partial Invalidity.** If in any instance any provision of this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement can no longer be preserved by doing so.
- 22.9 **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.

22.10 **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.

[End of Document]