

**PRATT & WHITNEY, ROCKETDYNE, INC. (PWR) A UNITED TECHNOLOGIES COMPANY  
GENERAL PROVISIONS 4 (GP 4 dated 8/15/2006)  
(Cost Reimbursement Contract Under Government Prime Contract)**

**1. FORMATION OF CONTRACT.** This proposed contract is Buyer's offer to purchase the goods and services (Goods) described in this offer. Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written.

**2. SCHEDULE**

- a. Seller shall strictly adhere to the shipment or delivery schedules specified in this contract. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Excusable Delays" article of this contract. The added premium transportation costs are to be borne by Seller and are not considered as an allowable cost under this contract.
- b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.

**3. PACKING AND SHIPPING**

- a. Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Unless this contract specifies otherwise, the price includes shipping charges for Goods sold F.O.B. destination. Unless otherwise specified in this contract, Goods sold F.O.B. place of shipment shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
- b. Unless this contract specifies otherwise, Seller will ship the Goods in accordance with the following instructions: (i) Shipments by Seller or its subcontractors must include packing sheets containing Buyer's contract number, line item number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment containing hazardous and non-hazardous materials must have separate packing sheets for the hazardous and non-hazardous materials. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods. Items shipped on the same day will be consolidated on one bill of lading or airbill unless Buyer's Authorized Procurement Representative authorizes otherwise. The shipping documents will describe the goods according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all Government bills of lading will be surrendered to the origin carrier at the time of shipment. (ii) Seller will not insure any F.O.B. origin shipment unless authorized by Buyer. (iii) Seller will label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g., box 1 of 2, box 2 of 2). (iv) Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer. (v) Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices. (vi) If Seller is unable to comply with the shipping instructions in this

contract, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's Authorized Procurement Representative.

- 4. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under this contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.
- 5. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States Government and to the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's Authorized Procurement Representative, extend such rights to other customers of Buyer and to agencies or instrumentalities of foreign governments equivalent in purpose to the Federal Aviation Administration. Seller shall cooperate with any such United States Government-directed or Buyer-directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in this contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.
- 6. SELLER NOTICE OF DISCREPANCIES.** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process or goods are discovered or suspected regarding Goods delivered or to be delivered under this contract.
- 7. INSPECTION OF SUPPLIES.** (Applicable only if supplies will be delivered.) FAR 52.246-3 (May 2001), "Inspection of Supplies - Cost Reimbursement," is incorporated by reference. "Contractor" means Seller, "Government" means Buyer and in paragraph (f) "6 months" is revised to read "12 months."
- 8. INSPECTION OF SERVICES.** (Applicable only if services will be provided.) FAR 52.246-5 (Apr 1984), "Inspection of Services - Cost-Reimbursement," is incorporated by reference. "Contractor" means Seller and "Government" means Buyer.
- 9. WARRANTY.**

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

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

**10. LIMITATION OF COST.** (Applicable if this contract is fully funded.) FAR 52.232-20 (Apr 1984), "Limitation of Cost," is incorporated by reference. "Schedule" means this contract, "Contractor" means Seller and "Government" and "Contracting Officer" mean Buyer. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive" and paragraph (d)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract."

**11. LIMITATION OF FUNDS.** (Applicable if this contract is incrementally funded.). FAR 52.232-22 (Apr 1984), "Limitation of Funds," is incorporated by reference. "Schedule" means this contract, "Contractor" means Seller "Government" and "Contracting Officer" means Buyer. The word "exclusive" in the second sentence of paragraph (b) is revised to "inclusive" and subparagraph (f)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this contract; and"

**12. TAXES.** Unless this contract specifies otherwise, the price of this contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

**13. INVOICE AND PAYMENT**

- a. Except as provided in this article, payment will be made in accordance with the following

clauses of the Federal Acquisition Regulations (FAR), which are incorporated by reference. In each of the following clauses, "Contractor" means Seller, "Contracting Officer" and "Government" mean Buyer and "Disputes Clause" means the Disputes Clause of this contract.

(i) FAR 52.216-7 (Feb 2002) Allowable Cost and Payment.

(ii) FAR 52.216-8 (Mar 1997) Fixed Fee, if this is a cost-plus-fixed fee contract.

(iii) FAR 52.216-10 (Mar 1997) Incentive Fee, if this is a cost-plus-incentive fee contract.

Paragraph (e) is set forth in full elsewhere in this contract.

- b. Each invoice shall include Buyer's contract number. Buyer may take any offered discount. Payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice.
- c. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

#### **14. CHANGES**

- a. Buyer may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of this Order, including, changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer-furnished property, facilities, equipment, materials, or Services and/or (vii) quality requirements. Supplier shall perform any changes ordered by Buyer ("Change(s)"). Any Order terms that incorporate flexibility for variations or modifications in the ordinary course of dealing shall not be considered Changes within the meaning of this clause.
- b. Changes shall only be binding on Buyer if issued in writing by an authorized representative of Buyer's purchasing department. Buyer's engineering and technical personnel are not authorized to order Changes, including Changes to drawings, designs, or specifications
- c. If any Change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and the Order shall be modified in writing accordingly. Any claim by Supplier for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's purchasing department not later than fifteen (15) calendar days after the date of receipt by Supplier of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Supplier's request; provided, however, that Buyer may in its discretion consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Order.
- d. If the cost of property or material made obsolete or excess as a result of a Change is included in Supplier's Adjustment Claim, Buyer shall have the right to prescribe the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of this Order, as directed by Buyer. Nothing herein shall be construed as relieving Supplier of its duty to perform, including the failure of the Parties to resolve an Adjustment Claim. Buyer shall pay to Supplier in accordance with the terms of this Order all sums not in dispute pending resolution of an Adjustment Claim. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to setoff and withholding.

- e. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
- f. Notwithstanding the foregoing provisions of this article, the estimated or target cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this contract indicating the new contract estimated cost and the new amount allotted to this contract. Until such modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost" and "Limitation of Funds" articles of this contract.

## **15. DISPUTE RESOLUTION**

- a. Prior to either party initiating litigation, the parties shall follow the following process for the resolution of disputes:
  - 1. Upon the written request of a party to have an informal dispute resolution, each party shall, within five (5) calendar days of the date that such written request is received by the non-requesting party, designate a representative who will be responsible for communicating, producing documents and negotiating for the purpose of resolving such dispute. The representatives shall negotiate in good faith in an effort to resolve the dispute.
    - a. During the course of negotiations, all reasonable requests made by one party to another for information that is not privileged, proprietary, or otherwise confidential and is reasonably related to the dispute, will be promptly honored.
    - b. The specific format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of written and/or oral statements of fact, statements of position and/or offers of settlement. The parties acknowledge that any such statements or offers will be prepared in connection with settlement negotiations, and as such will be privileged and shall not be used in any subsequent proceedings, whether related to the dispute or not, against the party who prepared such statement or offer unless it is subsequently introduced by the preparing party in a subsequent proceeding. No such written and/or oral statements or offers of settlement shall constitute an admission or waiver of rights by either party in any proceedings. At the request of either party, all such written statements or offers of settlement, and all copies thereof, shall be promptly returned to the party who provided the same.
    - c. Should the designated representatives fail to reach agreement within thirty (30) calendar days of receipt of the written request by the non-requesting party (or such longer period as such representatives may agree in writing), then upon the written request of either party, a vice president of each party shall attempt to resolve the issue within thirty (30) calendar days of receipt of the written request by the non-requesting party.
- b. Notwithstanding any other provision of this section/paragraph, either party may resort to court action for injunctive (or other) relief at any time if the dispute resolution processes set forth in this clause would permit or otherwise cause irreparable injury to such party or any third party claiming against such party, due to delay arising out of the dispute resolution process.

- c. Each party shall continue performing its obligations under this agreement while any dispute is being resolved. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in the agreement.
- d. This section/paragraph shall not be construed to prevent a party from instituting, and each party is authorized to institute, formal proceedings prior to the completion of the parties' obligations under this section/paragraph in order to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.

**16. NOTICE TO BUYER OF LABOR DISPUTES.** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Seller shall immediately give notice thereof, including all relevant information, to Buyer.

**17. EXCUSABLE DELAYS.** FAR 52.249-14 (Apr 1984), "Excusable Delays," is incorporated by reference. "Contractor" means Seller and "Contracting Officer" means Buyer.

**18. TERMINATION/CANCELLATION**

- a. The performance of work under this contract may be terminated in whole or in part by Buyer in accordance with the Termination clause set forth in FAR 52.249-6 (Sep 1996), which provisions, except for subparagraphs (e) and (j), are incorporated herein by reference. "Government" and "Contracting Officer" mean Buyer and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place.
- b. By written notice, Buyer may cancel the whole or any part of this contract in the event of Seller's default of any or all of the requirements of this contract or in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

**19. ASSIGNMENT, DELEGATION AND SUBCONTRACTING.** Seller shall not assign any of its rights or interest in this contract or subcontract all or substantially all of its performance of this contract without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

**20. PUBLICITY & NEWS RELEASES.**

- a. Any release of information relating to this Order, including news releases, articles, brochures, advertisements, speeches, etc., requires written permission of Buyer and will include acknowledgment of Government sponsorship where applicable. The Supplier further agrees to include this provision in any subcontract awarded as a result of this Order.
- b. Supplier shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Supplier has contracted to furnish Buyer the Goods or Services ordered by Buyer, or use any trademarks or trade names of Buyer in Supplier's advertising or promotional materials. In the event of Supplier's breach of this provision,

Buyer shall, in addition to other available remedies, have the right to cancel the undelivered portion of any Goods or Services ordered by Buyer and, further, Buyer shall not be required to make further payments to Supplier except for conforming Goods delivered or Services rendered prior to Buyer's cancellation as herein provided.

**21. BUYER'S PROPERTY.** Seller shall clearly mark; maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer upon completion, termination or cancellation of this contract, Seller shall deliver such property, to the extent not incorporated in delivered end goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

**22. GOVERNMENT-OWNED PROPERTY.** FAR 52.245-5 (Jan 1986), "Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts)," is incorporated by reference. "Contractor" means Seller, "Government" and "Contracting Officer" mean or include Buyer and paragraph (g) is revised to read as follows:  
"(g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this contract, or at such other time as may be directed by Buyer pursuant to paragraph (i) of this article, Seller shall return such property to Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder."

**23. INTELLECTUAL PROPERTY RIGHTS.**

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

display, perform, adapt and use, make derivative works, embed and otherwise freely exploit in any and all media now known or later developed, all materials and other information which Supplier provides or has provided to Buyer either during the term of or prior to the effective date of this Order. Supplier hereby represents and warrants to Buyer that all materials, devices, Services and other information that Supplier uses, copies or adapts hereunder are created originally by Supplier and/or are licensed lawfully to Supplier, with the rights to allow Supplier to comply with this Order

- d. Supplier shall promptly disclose in writing to Buyer all Intellectual Property produced or first reduced to practice in the performance of this Order. To the extent permissible by law, Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably assigns and hereby agrees to assign to Buyer all right, title and interest to all Intellectual Property, and agrees to do all things reasonably necessary to enable Buyer to secure United States patents, copyrights and any other rights relating to Intellectual Property, including the execution of a specific assignment of title of any Intellectual Property to Buyer and to cooperate with Buyer at Buyer's expense to defend and enforce any such Intellectual Property. Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably waives all "moral rights", all rights of privacy and publicity, and the like, in all materials provided to Buyer. Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of this Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns all right, title, and interest it has to any copyright in such works and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- e. The tangible and intangible work product developed under this Order, whether or not delivered under this Order, including, but not limited to, all analyses, recommendations, reports, and memoranda, shall become the property of Buyer.

#### **24. INFRINGEMENT INDEMNITY.**

- a. For work performed hereunder or goods or services delivered hereunder, Supplier shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any claim, suit or action, export or import proceeding, alleging that manufacture, export, import, use, sale or offer for sale infringes any patent, trademark, copyright, semiconductor chip product mask work right, other right or misappropriation of information or other violation of an Intellectual Property right; except, however, when such alleged infringement arises as a necessary consequence of Supplier's compliance with specifications or designs furnished by Buyer that describe that aspect of the Goods or Services on which such alleged infringement is based. In such event, Buyer shall save Supplier harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement was derived from, or selected by Supplier.
- b. The party against whom such infringement claim is made, or such suit or action is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action as such is commenced against the other party. Insofar as its interests are affected the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action. Buyer shall have the right to reasonably reject counsel selected by Supplier and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer.

Buyer shall have the right to participate with Supplier in determining the strategy to defend any such suit or action.

- c. Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Supplier in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event supplier shall be released from its obligation to pay for attorneys fees and court costs. Further, Supplier, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.

**25. PROTECTION OF BUYER'S PROPRIETARY INFORMATION.**

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

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

b. Receipt and Protection of Buyer's Proprietary Information

- i. Supplier agrees to inspect upon receipt of all information provided to Supplier by or for Buyer and prior to any copying, use, disclosure or transfer of the information, to notify Buyer in writing through Buyer's cognizant Purchasing Department of any such information which Supplier believes is not Buyer's Proprietary Information. Supplier agrees that failure to provide such notice prior to copying, use, transfer or disclosure of such information shall waive any subsequent claim by Supplier that such information is not required to be treated as Buyer's Proprietary Design Information under this Section.
- ii. Supplier agrees not to receive or accept Buyer's Proprietary Information knowingly from any person, firm, corporation or entity other than Buyer, with the exception of Buyer's Proprietary Information furnished in connection with solicitations or

purchase orders issued by a partner or higher-tier supplier of Buyer which expressly reference a Buyer Purchase Order or contain the certification required under this Section, without Buyer's express written consent. Supplier shall promptly notify Buyer if Buyer's Proprietary Information is offered to Supplier by a third party.

- iii. Supplier agrees and promises to keep Buyer's Proprietary Information confidential, and strictly protect it against any use, disclosure or transfer not expressly permitted under this section.
- iv. Supplier promises and agrees to cause all documents and records (including computer or other electronic records) containing or derived in whole or in part from Buyer's Proprietary Information or containing Supplier-developed Buyer's Proprietary Information to bear the following legend:

#### **WARNING**

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

- v. Supplier acknowledges that exposure to Buyer's proprietary design information will make it easier for Supplier to manufacture parts that have the same form, fit and function as parts Supplier manufactures for Buyer. As a result, Supplier agrees and promises to notify Buyer in writing through Buyer's cognizant Purchasing Management and to obtain Buyer's written agreement, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function of any parts Supplier manufactures for Buyer (including any replacements or substitutes for any parts Supplier manufactures for Buyer). The written notification shall describe the parts to be manufactured for the other entity and identify the corresponding parts Supplier manufactures for Buyer. The written notification shall also provide Buyer with sufficient information to demonstrate, to Buyer's reasonable satisfaction, that any parts Supplier plans to manufacture for another entity that have the same form, fit and function of any parts Supplier manufactures for Buyer will be manufactured without reference to or use of Buyer's proprietary design information. Supplier agrees that failure to comply with the above requirement shall create a presumption that Supplier is misusing Buyer's proprietary design information and will cause Buyer irreparable harm. If, without obtaining Buyer's written agreement, Supplier manufactures or sells any parts that have the same form, fit and function of any parts Supplier manufactures for Buyer (including any replacements or substitutes for any parts Supplier manufactures for Buyer) to which the presumption described in the immediately preceding clause applies, to anyone other than Buyer (or applies for or assists a third party in obtaining FAA or other government approval for such parts), then Supplier shall be in violation of this Agreement and Buyer shall be entitled to damages (including, but not limited to, injunctive relief and Buyer's lost

profits on the manufacture or sale of such parts).

- vi. Supplier agrees and promises that those persons working for or at the direction of Supplier who are exposed to Buyer's Proprietary Design Information for Buyer's parts will have no involvement in the manufacture of parts with the same form, fit and function for any entity other than Buyer without the prior written approval from Buyer.

c. Use of Buyer's Proprietary Information

- i. Supplier agrees and promises to use Buyer's Proprietary Information only to perform this Order or other Orders for Buyer, and not to use Buyer's Proprietary Information for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design of a part, or obtain FAA Parts Manufacturer Approval, a supplemental type certificate or other government approval to manufacture or repair a part, without Buyer's express written consent.

- ii. Buyer hereby expressly consents to Supplier's use of Buyer's Proprietary Information to respond to a solicitation from or perform purchase orders for a partner of or higher-tier supplier for Buyer when the solicitation or purchase order expressly references a Buyer Order or contains the following certification:

"Goods or services required are solely for United Technologies Corporation, a subsidiary, division, or affiliate of United Technologies Corporation, or a partner thereof acting pursuant to a Partnership Agreement."

- iii. Buyer further expressly consents to Supplier's use of Pratt & Whitney Proprietary Design Information provided to Supplier by Buyer on or before January 20, 1984, to respond to solicitations from or perform purchase orders for the direct purchase by the U.S. Government of military engine parts. This consent is strictly limited, and does not apply to Pratt & Whitney Proprietary Information which:

- a. was provided to Supplier by Buyer after January 20, 1984;
- b. was provided to Supplier at any time by any party other than Buyer; nothing in this Section limits Supplier's right to use Pratt & Whitney Rocketdyne, Inc. design information provided to Supplier lawfully by the U. S. government or a party which obtained the information lawfully from the U. S. Government;
- c. pertains to commercial engine parts; or
- d. is to be used for other than direct U. S. Government military contracts.

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

- d. Disposition of Scrap or Surplus Goods Manufactured Using Buyer's Proprietary Information:  
Supplier agrees and promises not to sell or dispose of as scrap or otherwise any completed or partially completed or defective Goods manufactured using Buyer's Proprietary Information without mutilating said Goods in the manner prescribed by Buyer's pertinent parts mutilation standards, or in another manner approved in writing by Buyer.
- e. Disclosure or Transfer of Buyer's Proprietary Information
- i. Supplier agrees and promises not to disclose or transfer Buyer's Proprietary Information to any other person, firm, corporation or entity without Buyer's express written consent.
  - ii. Buyer hereby expressly consents to Supplier's disclosure or transfer of Buyer's Proprietary Information to its subcontractors or potential subcontractors to the extent strictly necessary to respond to solicitations from or perform this Order for Buyer or purchase orders for a partner of or higher-tier supplier for Buyer as permitted by this Section. Supplier agrees and promises to ensure that any such transfer or disclosure is made under a written solicitation, agreement or subcontract by which the recipient of Buyer's Proprietary Information accepts and is bound by each and every obligation of this Section. Supplier agrees and promises not to transfer or disclose Buyer's Proprietary Information to any person, firm, corporation or entity for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design a part, or apply for FAA Parts Manufacturer Approval or other government approval to manufacture a part, without Buyer's express written consent.
- f. Disposition of Buyer's Proprietary Information on Completion or Termination  
At any time following completion or termination of this Order, Supplier shall, at Supplier's expense, make such disposition of all Buyer's Proprietary Information as Buyer may direct. Without limitation, Supplier of this Section shall remain and continue to be obligated to perform each and every provision, notwithstanding completion or termination of this Order. Absent contrary instructions, Supplier shall destroy all Proprietary Information one year after final delivery under this Order unless required to be kept longer by law or contract or government requirement.
- g. Audit and Inspection  
Buyer shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- h. Precedence  
This provision shall take precedence over those provisions of any agreement between the parties covering the protection of Buyer's Proprietary Information dealt with in this provision.

**26. GRATUITIES AND COVENANTS AGAINST KICKBACKS.**

- a. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this contract or securing favorable treatment under this contract.
- b. Supplier further represents, warrants, covenants and agrees that neither Supplier nor its

affiliates nor any subcontractors (including any of their officers or employees) has engaged or will engage in:

- i. providing, attempting to provide, or offering to provide any kickback (as defined in the Anti-Kickback Act of 1986 or any other applicable national, state or local laws regarding kickbacks or commercial bribery) ("Kickback");
- iii. soliciting, accepting, or attempting to accept any Kickback; or
- iv. including, directly or indirectly, the amount of any Kickback in any invoices or billings submitted under this Order or any other agreement with Buyer or in the subcontract price charged by any subcontractor to a higher-tier subcontractor.

## **27. OFFSET CREDITS**

- a. Buyer may be required by its customers to fulfill offset and other industrial cooperation obligations in specific countries. These obligations may take the form of technology transfer, purchase of components or services, technical and export assistance or other business transactions.
- b. Supplier acknowledges Buyer's exclusive rights in and to any offset credit that is generated as a result of this Order and any subsequent subcontracting by the Supplier to fulfill this Order. Buyer may use all or any part of the value of this Order, including the value of subcontracts placed by the Supplier for this Order, for satisfying offset obligations of Buyer, Buyer's affiliates or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by this Order or the subcontracting of this Order only upon the receipt of written approval from the Buyer.
- c. Supplier shall also support Buyer, in any manner reasonably requested by Buyer, and at no additional cost to Buyer, in meeting Buyer's offset requirements in the amounts and in the countries specified by Buyer. The amount of the support shall not exceed the proportion of the offset obligation that is the ratio of the value of the component or system supplied by Supplier to the value of the end item sold by Buyer into the particular country. Supplier shall furnish upon request any certificates or other documents reasonably required by Buyer in fulfillment of Buyer's offset obligations, including, any documents transferring title to the offset credits to Buyer, any documents perfecting any rights granted to Buyer in this Article, and Uniform Commercial Code financing statements; and take other action as Buyer deems appropriate in order to protect Buyer's interests in offset credits.
- d. If Supplier fails to satisfy its obligations under paragraph (b) or (c) above then Buyer may, in addition to any other rights and recourses it may have at law or pursuant to any agreement with Supplier, require Supplier to either: (i) compensate Buyer for additional costs or penalties incurred by Buyer due to Supplier's failure; or (ii) participate to an equivalent value in offset activities of Buyer or of any UTC affiliate or division in another country identified by Buyer.

**28. UTILIZATION OF SMALL BUSINESS CONCERNS.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this contract. Upon Request Supplier will provide monthly reports to Buyer detailing small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and

minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns contracted in support of Supplier's obligations hereunder.

**29. RIGHTS AND REMEDIES.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this contract, or in exercising any rights or remedies under this contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this contract, 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. If any provision of this contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

**30. COMPLIANCE WITH LAWS.**

- a. Supplier shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, including those relating to pollution control, waste disposal, hazardous substances, and protection of the environment; and Supplier shall hold Buyer harmless from and against any and all liability due to the Supplier's failure to so comply.
- b. Seller warrants and represents that any Goods which are manufactured in the United States have been, or will be, produced in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act (FLSA), as amended (29 U.S.C. §§ 201-219) and of regulations and orders of the United States Department of Labor issued under section 14 thereof. The foregoing warranties and representations shall be considered Seller's written assurance contemplated by Section 12(a) and Section 15(a)(1) of the FLSA. Seller further warrants and represents that, insofar as applicable to this Order, any Goods which are manufactured in the United States have been, or will be, produced in compliance with all applicable requirements of and, the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), and any amendments thereto, as well as with the provisions of any other Laws with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted. The Seller also agrees to comply with the provisions of 29 CFR part 470.
- c. Supplier shall at the earliest practicable time notify in writing, and meet with, Buyer if Supplier is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or (ii) listed or is proposed to be listed by the U.S. Government in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist" for U.S. export administration purposes (collectively, "Debarment"). Supplier shall indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of Supplier's Debarment.

**31. EXPORT CONTROL.**

- a. Supplier shall comply with the most current export control and sanctions laws, regulations, and orders applicable at the time of the export and/or any re-export of Goods or Services including, without limitation, the i) United States Export Administration Regulations ("EAR"), ii) International Traffic in Arms Regulations ("ITAR"), iii) regulations and orders administered by the Treasury Department's Office of Foreign Assets Control and iv) laws and regulations of other countries (collectively, "Export Control Laws").
- b. Supplier shall notify Buyer of any Goods or Services that are controlled by the ITAR ("ITAR Items") and shall, upon request, provide Buyer with the applicable Export Control Classification Numbers ("ECCNs") of Goods or Services, as well as the ECCNs of any components or parts thereof (collectively "Components") if the Component ECCNs are

different from the ECCN of the Goods or Services. To the extent that such Goods, Services or Components were specifically designed, developed, configured, adapted or modified for a military application, Supplier shall notify Buyer of this fact and shall provide Buyer with written confirmation from the United States Department of State that such Items are not subject to the jurisdiction of the ITAR.

- c. For Goods and Services not identified as required above, Supplier represents that (i) the Services, Goods and Components it is providing are not “defense articles” as that term is defined in 22 C.F.R. § 120.6 of the ITAR and (ii) the Services it is providing under this Agreement are not “defense services” as that term is defined in 22 C.F.R. § 120.9 of the ITAR. Supplier acknowledges that this representation means that an official capable of binding the Supplier knows or has otherwise determined that the Goods, Services and Components, are not on the U.S. Munitions List at 22 C.F.R. §121.1 of the ITAR. Supplier shall provide Buyer, upon Buyer’s reasonable request, with any documentation and other information that supports or confirms this representation
- d. If Seller is engaged in the United States in the business of either exporting, manufacturing or brokering ITAR Items, Seller represents that it is registered with the Directorate of Defense Trade Controls (“DDTC”), as may be required by 22 C.F.R. 122.1 of the ITAR and that it maintains an effective export/import compliance program in accordance with DDTC guidelines.
- e. Supplier acknowledges that any technical data furnished by Buyer in connection with this Order may be subject to Export Control Laws. In regard to United States Export Controls, Supplier shall not export, re-export or re-transfer technical data controlled by Export Control Laws (“Technical Data”), and shall not disclose Technical Data to any foreign persons or foreign commercial entities, including employees, consultants, subcontractors, vendors or suppliers, unless Supplier receives advance, written confirmation from Buyer that such export, re-export or re-transfer complies with Export Control Laws. Supplier shall also abide by any restrictions contained in any of Buyer’s export licenses pertinent to Supplier’s export or re-export of technical data. Technical Data provided to Supplier in connection with this Order is to be utilized only for the manufacture of the articles required by this Order. The transfer or disclosure of the data to any other foreign person or to Supplier’s employees who are citizens or dual citizens of a country other than the country in which Supplier is performing the Order, is prohibited without Buyer’s advance, written authorization. The acquisition of any rights in Technical Data by any foreign person is prohibited. Any subcontracts between foreign persons in the approved country for manufacture of Goods, or provision of Services, shall contain all the limitations of this paragraph. Upon completion of its performance under this Order, Supplier and its subcontractors shall destroy or return to the Buyer all Technical Data.
- f. Delivery of any ITAR Items shall only be made to the Buyer in the United States, to an agency of the U.S. Government or as otherwise authorized under Buyer’s export licenses as Buyer may direct. Compliance with export laws and regulations (including license application requirements, delays thereof, or revocation or non-renewal of licenses) does not relieve Supplier of its obligations under any other terms and conditions of this Order and shall not constitute a force majeure or give rise to an excusable delay hereunder.

**32. GOVERNING LAW.** This contract shall be governed by and construed in accordance with the laws of the state of New York. This contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**33. GOVERNMENT CLAUSES.** Government clauses applicable to this contract are incorporated herein either by attachment to this document or by some other means of reference.

- 34. EVIDENCE OF CITIZENSHIP OR IMMIGRANT STATUS.** Buyer may be required to obtain information concerning citizenship or immigrant status of Seller's personnel or Seller's subcontractor personnel entering the premises of Buyer. Seller agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on Buyer's premises. Information submitted by Seller shall be certified by an authorized representative of Seller as being true and correct.
- 35. ACCESS TO PLANTS AND 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.
- 36. CODE OF CONDUCT.** Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to United Technologies Company Ethics hotline. Copies of The United Technologies Corporation Code of Ethics and contacts for such reports are available at the UTC Website address: [http://www.utc.com/responsibility/economic/ethics/english/coe\\_english.pdf](http://www.utc.com/responsibility/economic/ethics/english/coe_english.pdf) under "Governance." Although Buyer will not use the failure to report improper or unethical behavior as a basis for claiming breach of contract by Seller, Seller is encouraged to exert reasonable effort to report such behavior when warranted.
- 37. ENTIRE AGREEMENT.** This contract contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this contract. No amendment or modification of this contract shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.