



**UNITED TECHNOLOGIES CORPORATION**

**STANDARD TERMS AND CONDITIONS OF PURCHASE  
SERVICES**

**January 2017 VERSION**

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## 1. **Definitions**

- 1.1 "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2 "Agreement" means the master terms agreement, long term agreement, subcontract, or other agreement that references these Terms and Conditions, and pursuant to which Orders are issued to Supplier.
- 1.3 "Business Contact Information" shall mean name, job title, job function, name of employer, information about the employer (such as business unit or group charge number), and work contact details, such as work telephone numbers, work email address, work mailing address, work office address, job title, job function, employer name, and supervisor or assistant name and work contact details.
- 1.4 "Buyer" means United Technologies Corporation ("UTC") or the Buyer Affiliate that issues an Order referencing the Agreement and/or these Terms and Conditions, and any successor or assignee of Buyer.
- 1.5 "Buyer Personal Information" shall mean any information or data provided to Supplier or its agents, representatives, or subcontractors in connection with the Agreement, any Order and the transactions thereunder that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable law, that is subject to any Data Privacy Laws.
- 1.6 "Buyer's Customer" means the ultimate owner or lessee of the Services and includes the purchaser of an end product incorporating the Services provided by Supplier under the Order.
- 1.7 "Data Privacy Laws" shall mean applicable national, federal, state and provincial laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the laws and regulations of the European Union member states under the European Union Directive 95/46/EC (the "EU Directive"), the General Data Protection Regulation ("GDPR"), and any European Union law or regulation that may be enacted to replace the EU Directive or the GDPR.
- 1.8 "Delivery Date" means the date of delivery for Services as specified in an Order and/or by the Delivery System.
- 1.9 "Delivery System" means Buyer's computer-based, web-enabled delivery scheduling system or, alternatively, other paper-based communication system.
- 1.10 "Derived Technical Data" means information that is (i) of non-U.S. origin but subject to U.S. jurisdiction, and (ii) in any form necessary for the design, development, production, operation, modification or maintenance of Services, as set forth in applicable ITC Laws. Derived Technical Data can include, but is not limited to, drawings, specifications, or

operation sheets that contain U.S.-origin data or that were developed using U.S.-origin data.

- 1.11 "FAA" means the U.S. Federal Aviation Administration.
- 1.12 "Facilities" means Buyer's facilities or the facilities of Buyer's Customers.
- 1.13 "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 1.14 "ITC Laws" mean the import, customs, export control, sanctions and U.S. anti- boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, goods or Services including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (the "ITAR") administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.
- 1.15 "Order" means a paper or electronic document sent by Buyer to Supplier, or where provided for in an Agreement, an entry on a Buyer web site, to initiate the ordering of Services, such as a purchase order, a scheduling agreement, a statement of work or other authorization or Order, and including change notices, supplements or modifications thereto. The phrase "in connection with the Order" includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes Agreement.
- 1.16 "Party" or "Parties" shall mean Buyer and/or Supplier, individually or collectively, as the context requires.
- 1.17 "Prime Contract" means the government or commercial sales contract between Buyer and Buyer's Customer.
- 1.18 "Processing" or "Processes" means with respect to UTC Information, to use, access, manipulate, modify, disclose, store (including backup), transmit, transfer, retain and dispose of such UTC Information.
- 1.19 "Services" means services described in Orders, the purchase of which is governed by the terms of this Agreement and will be deemed to include, without limitation, all related

work product, goods and deliverables, including, without limitation, software, technology, drawings, data reports, manuals, other specified documentation, or items that are necessary and incidental to, or required to be delivered pursuant to, or in connection with, an Order.

- 1.20 "Specifications" means all requirements with which Services and performance hereunder must comply, including, without limitation, as applicable, ASQR-01 or its then-current successor, drawings, instructions and standards, on a Buyer web site or elsewhere, as such requirements are specified and/or referenced in Orders, as such requirements are modified from time to time by Buyer.
- 1.21 "Supplier" means the legal entity providing Services or otherwise performing work pursuant to an Order.
- 1.22 "Supplier Personnel" shall mean Supplier's employees, agents, representatives, subcontractors, subcontractor employees, or any other person used by Supplier in the performance hereof.
- 1.23 "Systems" means Buyer's or Buyer's Customer's computer based information systems, computer systems, databases and/or files.
- 1.24 "Technical Data" means information that is necessary for the design, development, production, operation, modification or maintenance of Services as set forth in applicable ITC Laws. "Technical Data" includes Derived Technical Data.
- 1.25 "Terms and Conditions" means this document, the United Technologies Corporation Standard Terms and Conditions of Purchase, regardless of whether modified or unmodified by the Parties.
- 1.26 "UTC Information" means (i) any Proprietary Information and any other data, materials or information owned or managed by Buyer or Buyer's Affiliates or which Buyer or Buyer's Affiliates are obligated to manage and/or protect on behalf of others: (a) provided to Supplier by Buyer or Buyer's Affiliate; or (b) that Supplier collects, Processes, generates or uses for or on behalf of or at the direction of Buyer or Buyer's Affiliate in providing the Services to Buyer or Buyer's Affiliate; or (c) collected, Processed, generated, or used by Supplier or Supplier Personnel in providing the Services, including in each case metadata from Buyer's or Buyer's Affiliates' use of the Services and derivatives of any of the foregoing (e.g., aggregations of UTC Information, profiles of users of the Services, or analysis of the content of Buyer or Buyer's Affiliate data records or how Buyer or Buyer's Affiliate uses the Services) and (ii) Buyer Personal Information.

## **2. Scope of Agreement**

Supplier's (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order, including these Terms and Conditions. Any terms and conditions proposed in Supplier's offer, acceptance or in any acknowledgment, invoice, or other

form of Supplier that add to, vary from, or conflict with the terms herein are hereby rejected.

### **3. Specifications**

Supplier shall comply with all Specifications. Supplier shall immediately notify Buyer, in writing, of any failure of the Supplier and/or the Services to comply with the Specifications.

### **4. Payment**

If not otherwise specified in the Agreement or face of the applicable Order, payment of invoices issued under any Order shall be due and payable 90 days following Buyer's receipt thereof, provided (i) the associated Goods and/or Services have been delivered pursuant to Buyer's delivery requirements and (ii) Buyer's invoicing requirements have been satisfied (including, without limitation, references to the applicable Order number, description of items, quantities, unit prices, and taxes).

### **5. Delivery**

5.1 Supplier shall use the Delivery System and electronic data exchange billing and invoicing systems (collectively, "Buyer Systems") specified by Buyer.

5.2 The delivery information in the Buyer Systems shall establish the Delivery Dates for the Services. Supplier shall only ship in accordance with the rules established by the Buyer Systems, and shall make use of the bar codes and other documentation generated by the Delivery System.

5.3 Time is of the essence in Supplier's performance of an Order, and Supplier shall perform Services by the Delivery Date.

5.4 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 Services ordered.

5.5 Supplier shall give Buyer at least 180 days prior written notice of the permanent discontinuance of production of items covered by Orders, provided however that compliance with this provision shall in no way relieve the Supplier from its obligations under the Order.

### **6. Warranty**

6.1 Supplier warrants to Buyer that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and highest generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements contained in the Order (the "Service Warranty").

Supplier agrees that should any of the Services be defectively performed by Supplier, Supplier will re-perform or correct such defective Services at no additional charge. In the event of failure by Supplier to correct defects in or replace nonconforming Services promptly, Buyer, after reasonable notice to Supplier, may make such correction or replace such Services and charge Supplier for the cost incurred by Buyer thereby. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Services not conforming to the Services Warranty.

- 6.2 Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier's subcontractors or business partners related to the Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.
- 6.3 Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Supplier agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Supplier 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 Supplier'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.

## **7. Indemnification**

Supplier shall indemnify and save harmless Buyer, Buyer's Customers, insurers, Affiliates and their employees, agents, officers and directors for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorneys' fees) relating to, arising out of, or caused by the performance hereunder, any act or omission of Supplier or any Services. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.

## **8. Taxes**

- 8.1 Unless otherwise stated in this Agreement or the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees or duties ("Taxes") levied in regard to any of the transactions covered by this Agreement or the Order.
- 8.2 When invoicing, Supplier shall separately state any Taxes that Supplier is required to collect from Buyer and warrants that invoices comply with all requirements, as to content and format, of tax and civil statutes that have jurisdiction over the transaction(s) performed by Supplier.
- 8.3 Supplier is solely responsible for the fulfillment of its obligations to collect and remit Taxes collected from Buyer under this Agreement or the Order to the proper tax authorities, as required by law. Any penalties, fees or interest charges, or any other levy imposed by a government authority related to Supplier's failure to collect or remit any



such Taxes shall be borne by Supplier. Buyer is not responsible for any tax based on Supplier's income, payroll or gross receipts.

- 8.4 If Buyer is required by law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.
- 8.5 Supplier shall, upon receipt from any tax authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing at its stipulated address, directed to: Director, Indirect Tax. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall contest the Taxes as requested by the Buyer.
- 8.6 Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet."
- 8.7 Buyer and Supplier agree to work together in good faith as needed to eliminate or reduce any applicable Taxes, levies, excises, import fees, clearance costs, or other charges of any kind which may be payable by either Party, where applicable, and to secure any certificate of exemption or recoveries; provided that any such efforts do not cause a transfer of the tax burden from one Party to the other Party, or otherwise serve to modify the terms and conditions of this Agreement or the Order without written consent from both Parties.

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

- 9.1 In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer, an authorized representative of Buyer, or any competent regulatory authority, may at any time after reasonable notice by Buyer, inspect and audit Supplier's books and records, its facilities, or such parts of its facilities as may be engaged in the performance of this Order, and Supplier shall provide reasonable access to Supplier's personnel, for Buyer to assess and verify Supplier's compliance with the requirements set forth in the Order.
- 9.2 Supplier shall maintain such complete books, records and documentation for all Services performed, which shall be available to Buyer during performance of an Order and until the later of: (i) 4 years after final payment, (ii) final resolution of any dispute involving the Services performed hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, or (v) as otherwise directed by Buyer.

## **10. Buyer's Property**

All tools, equipment models, drawings or other materials furnished by Buyer to Supplier or made by Supplier for the purpose of this Agreement or paid for by Buyer and all replacements thereof and materials attached thereto, shall be and remain the property of

Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Supplier as being Buyer's property, will at Supplier's expense be safely stored (separate and apart from Supplier's property whenever practicable) and maintained and will be kept free of all liens, claims, encumbrances and interests of third parties. Supplier shall be responsible for loss of and damage to Buyer's property.

## **11. Changes**

- 11.1 Buyer's authorized procurement representative may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) any designs, Specifications and drawings, (ii) the statement of work, (iii) the method or manner of performance, and/or (iv) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.
- 11.2 If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Supplier'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 15 days from the date Supplier receives the Change order.

## **12. Insurance**

- 12.1 Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed under the Agreement and any Order for the duration of the Agreement and any Order: (i) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; (ii) Commercial General Liability Insurance including Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence; (iii) if Supplier vehicles are used on Buyer's premises and/or used to accomplish work under the Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$2,000,000 for any one occurrence; (iv) if Supplier or its subcontractors have Buyer's materials or equipment in its care, custody or control, Supplier shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; (v) if Supplier is performing professional services on behalf of Buyer, Supplier shall maintain Professional Liability Insurance with a limit of no less than \$5,000,000; (vi) if Supplier is rendering computer, coding or information technology services and/or technology products on behalf of Buyer, Technology Errors and Omissions Liability Insurance with a limit of not less than \$10,000,000 per claim, which insurance shall include, at a minimum, coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render such services and products, computer or information

technology services and technology products; and (vii) if Supplier is providing any software, code or algorithms (other than standardized off-the-shelf, non-customized software), has access to Systems, or will hold, process or store any UTC Information on Supplier's systems, Privacy and Network Security (Cyber) insurance, in an amount not less than \$5,000,000 per claim, which insurance shall include, at a minimum, protection for privacy breach, system breach, denial or loss of service, introduction, implantation, or spread of malicious software code, and unauthorized access to or use of computer systems.

- 12.2 All such insurance shall be issued by companies authorized to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed, and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- 12.3 The insurance coverages described above shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least 10 days' prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of Supplier's performance of work and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by Buyer. Certificates evidencing such insurance and endorsements naming UTC and Buyer as an additional insured or, in the case of All Risk Property Insurance, naming UTC and Buyer as a loss payee, shall be filed with Buyer upon execution of the Order and before commencement of any work hereunder, and within 30 days after any renewals or changes to such policies are issued. To the extent permitted by law, Supplier and its insurer(s) agree that subrogation rights against UTC and Buyer are hereby waived; such waiver shall be reflected on the insurance certificate. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under the Order and that such insurance shall not be invalidated by any act or neglect of Supplier whether or not such act or neglect is a breach or violation of any warranty, declaration or condition of the policies.
- 12.4 Buyer's failure to monitor compliance or unsatisfactory compliance with the terms of these insurance requirements does not modify or waive Supplier's obligations hereunder.
- 12.5 Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above will be assumed by, for the account of, and at the sole risk of Supplier. In no event will the Supplier's liability be limited to the extent of the minimum limits of insurance required herein.
- 12.6 Supplier agrees to insert the applicable substance of this Section in all major subcontracts entered into by Supplier to support work performed under the Order.

### **13. Termination for Convenience**

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

### **14. Termination for Default**

- 14.1 Buyer may, by written notice, terminate the Order (which, for the avoidance of doubt, includes the Agreement) or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder, including a delivery obligation; (ii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance within 10 days following Buyer's demand or, (iii) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition (each in subsection (iii), a "Supplier Insolvency").
- 14.2 Buyer shall have no liability in relation to those Services terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased procurement costs and other non-recurring costs, except in the circumstance of any failure or delay constituting an "Excusable Delay" as set forth in the Section herein entitled "Force Majeure."
- 14.3 If the Order is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, Buyer, in addition to any other rights Buyer may have, may require

Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary information, utilized by Supplier in performing the Order; (ii) provide technical and transition assistance; and (iii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary information, to the extent necessary, to enable Buyer to use and license and/or perform, or have performed, the Services.

- 14.4 In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Agreement or these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to use and license and/or perform, or have performed, the Services, subject to Buyer's agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary information, utilized by Supplier in performing the Order, and (ii) provide technical and transition assistance in order to ensure Buyer's continuing requirements for Services.
- 14.5 If, after notice of termination under this Section, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Section. In such case, Supplier shall not be entitled to any remedy other than as provided for in the Termination for Convenience Section.

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

- 15.1 "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.
- 15.2 "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 15.3 Each Party retains its existing rights in Background Intellectual Property.
- 15.4 Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground

Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

- 15.5 Supplier represents and warrants that Supplier has sufficient rights in all Services and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 15.6 Supplier hereby grants and promises grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, perform and have performed Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 15.7 Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Services provided to Buyer and in all activities in connection with the Order.
- 15.8 Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, firmware, free software, open source software, freeware, general public license-governed software, or any electronic hardware, including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software, and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software or electronic hardware.
- 15.9 Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

## **16. Intellectual Property Indemnification**

- 16.1 Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use, import, or other exploitation of any Services delivered or performed in connection with the Order ("Claim").

16.2 Supplier shall not be liable for any Claim based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was derived from, recommended by, or provided by, Supplier; or (iii) Supplier knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.

## **17. Proprietary Information**

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

17.2 "Proprietary Information" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii) conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.

17.3 Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.

17.4 Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.

17.5 The Order shall not restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.

- 17.6 If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section are fulfilled by Supplier.
- 17.7 Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 17.8 Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 17.9 Unless required otherwise by law or the Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information 1 year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 17.10 Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

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

- 17.11 Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of Buyer's Affiliates, and/or to Buyer's Customer or Buyer's subcontractors and potential subcontractors provided that Buyer's Customer or subcontractors have a need to access or know such information. Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to the FAA, the European Aviation Safety Agency (EASA), TCCA, any other governing international airworthiness certifying authority, and/or any other department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals.
- 17.12 Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued



by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Purchase Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.

- 17.13 For Proprietary Information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

**18. Security for UTC Information Stored by Supplier**

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

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

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

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

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

- 18.3 Supplier agrees to install and implement security hardware, software, procedures and policies that will provide effective information security and are acceptable to Buyer. Supplier agrees to monitor and update such hardware, software, procedures and policies to utilize improved technology and to respond to developing security threats in order to maintain a level of security protection, preparedness and resilience appropriate for the information involved and the then current state of security solutions. Upon request, Supplier shall provide Buyer with any reports or results of any internal audit

related to IT security performed by or on behalf of Supplier during the term of the Agreement and/or Order or any audit reports issued, including but not limited to, under the SSAE 16 report or ISAE 3402.

18.4 Supplier further agrees to:

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

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

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

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

18.4.3 Allow Buyer or its designee to conduct a security audit at its facilities on one day's notice, and allow Buyer at any time to conduct (or have conducted) a network audit. If the UTC Information is stored in a shared environment per the agreement of Buyer, then Buyer shall use a third party to conduct such audits. The audits shall include any facilities with UTC Information including backup storage facilities.

18.4.4 Segregate all UTC Information into a separate database only accessible by Buyer, and its agents and those employees and agents of Supplier that require access to perform the Services or to maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer. Logical segregation of data, if approved by Buyer, may be an acceptable alternative to this requirement. Supplier shall use

reasonable efforts, as measured by the available technology at the time, to prevent anyone other than its authorized employees and Buyer and its agents from accessing the UTC Information.

- 18.4.5 Assure that all UTC Information and applicable software is appropriately backed up and recoverable in the event of a disaster or emergency, and that Supplier's disaster recovery plan (as may be otherwise required herein) shall incorporate such requirements.
  - 18.4.6 Encryption Requirements. Supplier will use, and will cause Supplier Personnel to use, appropriate forms of encryption or other secure technologies at all times in connection with the Processing of UTC Information, including in connection with any transfer, communication, remote access or storage (including back-up storage) of UTC Information, as authorized or permitted under the Agreement and/or Order. Notwithstanding any provision to the contrary herein, Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g. laptop computers, PDAs (personal digital assistants), etc.)
  - 18.4.7 Provide Buyer, at the time of signing this Agreement and/or Order, with a termination plan that addresses how UTC Information will be returned to Buyer at the end of this Agreement and/or Order, including backup and archival information, and how all UTC Information will be permanently removed from Supplier's equipment and facilities. This plan should include supplying the data to Buyer in an industry recognized nonproprietary database and, if not, a license to use the proprietary database software to access the data.
  - 18.4.8 Provide information to and fully cooperate with Buyer in response to any subpoena, investigation or the like seeking UTC Information and provide information and assistance for Buyer to seek certification and the like relative to its information including information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that UTC Information be supplied to a third party.
  - 18.4.9 When requested by Buyer, Supplier agrees to comply, within a reasonable period of time, with UTC Information security policies as provided to Supplier by Buyer.
  - 18.4.10 Supplier shall not provide UTC Information to any other entity without the prior written approval of Buyer. A request for Buyer approval shall include agreement by Supplier, and such other entity, that (i) all of the requirements of this provision are applicable to their performance and (ii) Buyer shall have the right to perform the audits described above.
- 18.5 Supplier will provide to Buyer immediate written notice of (i) any failure to meet the then current standards for information security, and (ii) any and all reasonably suspected and/or confirmed Security Issues. Such notice will summarize in reasonable detail the impact on Buyer or any individuals affected by such Security Issue and the corrective action and remediation efforts taken or proposed to be taken by Supplier. Immediately following any Security Issue or any other failure to meet information security standards, whether identified by Supplier or Buyer, Supplier will take steps to mitigate risks posed,

consult in good faith with Buyer regarding remediation efforts, and undertake a remediation plan which Buyer determines in its sole but reasonable discretion, to be necessary, reasonable or appropriate under the circumstances commensurate with the nature of the Security Issue or failure, or as requested by any government body. Supplier will be solely responsible for all costs and expenses, including, without limitation, the reasonable costs of re-testing performed to verify that any Security Issue has been remediated. Failure to remedy the risks of a Security Issue or failure within the time frame and manner specified by Buyer is deemed a material breach of this Agreement.

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

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

- 19.1 Supplier shall perform identity screenings, work authorization verifications and background checks on any and all Supplier Personnel seeking Access in order to identify persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:
  - 19.1.1 Verify the identity and requisite work authorization of Supplier Personnel requiring Access. Buyer or its Affiliates may further direct Supplier to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, at Supplier's sole cost and expense.
  - 19.1.2 Except to the extent not permissible by applicable law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, as reported in the result of a background screen, or (ii) if they do have criminal convictions, Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
  - 19.1.3 Supplier shall not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and will notify Buyer immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.
- 19.2 Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access, and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, including, without limitation, with respect to export compliance, privacy, protection of UTC Information, security clearance, applicable training, drug screening, credit check, technology control plans, intellectual property agreements and compliance with other site-specific policies and procedures.

- 19.3 Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet such Access requirements and that Access privileges are limited to approved Supplier Personnel. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any information related to Supplier Personnel is altered or rendered inaccurate for any reason, or (ii) the need for Access ceases for any of such Supplier Personnel having Access. The need to Access shall automatically cease for any Supplier employees who are terminated, transferred, or otherwise no longer employed by Supplier.
- 19.4 Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access, and Supplier agrees that Buyer shall have the right to deny, and, without notice, terminate Access by Supplier or any of Supplier Personnel in whole or in part. Inability of Supplier to comply with the requirements of this provision shall not excuse Supplier from performing the Agreement and/or Order and shall not constitute an "Excusable Delay" as set forth in the Section herein entitled "Force Majeure."
- 19.5 If Supplier is an individual, Supplier acknowledges that he/she is not an employee of Buyer or Buyer Affiliate and is not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care and other employee benefit plans and arrangements. If Supplier is a company or other entity, it acknowledges that Supplier Personnel are not Buyer or Buyer Affiliate employees and are not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care and other employee benefit plans and arrangements.
- 19.6 Supplier acknowledges and agrees that any breach of this Section may result in a violation of law for which Buyer, Supplier, and/or Supplier Personnel may be liable. At Buyer's request, in advance of any request or grant of Access and at any other time, Supplier will provide Buyer (i) written certification, in a form provided by Buyer, that the Access requirements have been met, and/or (ii) documentation to verify the methodology, process and results relied upon by Supplier to comply with the Access requirements. The current certification form is available at <http://www.utc.com/Suppliers/Pages/Terms-and-Conditions.aspx>.

## **20. Data Privacy**

The following provisions apply whenever Supplier will have access to Buyer Personal Information; provided, however, if Supplier will only have access to Business Contact Information for the individuals involved in the purchase of the Services under this Agreement and/or Order, such provisions shall not apply.

- 20.1 Supplier shall:
- 20.1.1 comply with all applicable Data Privacy Laws;
  - 20.1.2 only collect, access, use, or share Buyer Personal Information, or transfer Buyer Personal Information to authorized third parties, in performance of its obligations under the Agreement and/or Order, in conformance with Buyer's instructions, or

to comply with legal obligations. Supplier will not make any secondary or other use (e.g., for the purpose of data mining) of Buyer Personal Information except (i) as expressly authorized in writing by Buyer in connection with Buyer's use of the Services, or (ii) as required by law;

- 20.1.3 not share, transfer, disclose or provide access to Buyer Personal Information for any third party except to provide services under the Agreement and/or Order or as required by law. If Supplier does share, transfer, disclose or provide access to Buyer Personal Information to a third party, it shall:
  - 20.1.3.1 be responsible for the acts and omissions of any subcontractor or other third party, that processes (within the meaning of the applicable Data Privacy Laws) Buyer Personal Information on Supplier's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such Buyer Personal Information;
  - 20.1.3.2 ensure such third party is bound by a written agreement that contains the same or equivalent obligations and protections as those set forth in this Section; and
  - 20.1.3.3 only share, transfer, disclose or provide access to a third party to the extent that such conduct is compliant with applicable law;
- 20.1.4 take commercially reasonable steps to ensure the reliability of Supplier's Personnel who have access to the Buyer Personal Information and ensure that such access is on a need-to-know basis;
- 20.1.5 provide such information, assistance and cooperation as Buyer or Buyer's Affiliates may reasonably require from time to time to establish Supplier's compliance with Data Privacy Laws;
- 20.1.6 provide Buyer with commercially reasonable assistance in (i) deleting the Buyer Personal Information upon request by the individual or legal representative; (ii) providing a privacy notice to individuals; and (iii) enabling individuals to opt-out;
- 20.1.7 provide Buyer with the ability to purge Personal Information older than one year or such other time period agreed upon in writing by the Parties; and
- 20.1.8 immediately advise Buyer in writing if it receives or learns of any: (i) complaint or allegation indicating a violation of Data Privacy Laws regarding Buyer Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Buyer Personal Information; (iii) inquiry or complaint from one or more individuals relating to the collection, processing, use, or transfer of Buyer Personal Information; and (iv) any regulatory request for, subpoena, search warrant, or other legal, regulatory, administrative, or governmental process seeking Buyer Personal Information (collectively, "Data Privacy Matters"). If Supplier learns of any such complaint, request, allegation, or inquiry, Supplier shall provide assistance to Buyer, fully cooperate with Buyer

in investigating the matter, including but not limited to, providing the relevant information to Buyer, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings. Buyer shall be responsible for communicating with individuals regarding their Buyer Personal Information in connection with such Data Privacy Matters unless Buyer authorizes Supplier to do so on its behalf. Supplier shall use commercially and legally reasonable efforts to limit the nature and scope of the required disclosure to the minimum amount of Buyer Personal Information required to comply with applicable law. Unless prevented by applicable law, Supplier shall provide Buyer with advance written notice of any such Data Privacy Matters sufficient to allow Buyer to contest legal, regulatory, administrative, or other governmental processes.

- 20.2 Supplier shall provide written notice to Buyer as soon as possible and, in no instance in more than 48 hours of any actual or reasonably suspected incident of accidental or unlawful destruction or accidental loss, alteration, unauthorized or accidental disclosure of or access to Buyer Personal Information of which it becomes aware (a "Security Breach"); thereafter shall take all reasonable measures to contain and remedy the Security Breach, wherever possible; provide Buyer with information regarding the investigation and remediation of the Security Breach, unless restricted by law; not make any notification, announcement or publish or otherwise authorize any broadcast of any notice or information about a Security Breach (a "Security Breach Notice") without the prior written consent of and prior written approval by Buyer of the content, media and timing of the Security Breach Notice (if any), unless required to do so by law or court order; and even where required to do so by law or court order, make all reasonable efforts to coordinate with Buyer prior to providing any Security Breach Notice. Where the Security Breach involves data elements that could lead to identity theft and is on the Supplier's networks or systems or is the fault of the Supplier, Supplier will, at the request of Buyer pay for the costs of remediation, notification (including, where reasonably necessary, a call center), and provide the affected individuals with credit monitoring or other commercially-reasonable identity theft mitigation service for one year or such longer period as required by law or a government regulator
- 20.3 Supplier shall obtain the prior written consent of any and all natural persons from whom Supplier collects Buyer Personal Information when required to do so by applicable Data Privacy Laws or as instructed by Buyer. In the event Supplier shall provide to Buyer personal information protected by Data Privacy Laws, Supplier shall ensure that such personal information is provided consistent with applicable law, including, where required, obtaining consent or providing notice.
- 20.4 All Buyer Personal Information acquired by Supplier shall be returned or destroyed (at the option of the applicable Buyer Affiliate), unless and to the extent that: (i) such Buyer Personal Information is required by Supplier to discharge its obligations hereunder or under applicable law; or (ii) return or destruction is prohibited by applicable law. Absent contrary instructions and except as prohibited by law, Supplier shall immediately destroy all Buyer Personal Information after termination or completion of the Order after waiting 30 days to allow Buyer to request return of Buyer Personal Information.
- 20.5 If this Agreement and/or Order involves the provision of Services where the Supplier will (i) act as a Controller (as that term is defined in the EU Directive) and (ii) transfer Buyer

Personal Information from any country in the European Economic Area or Switzerland (collectively, "EEA/CH") to outside the EEA/CH, then the Buyer and Supplier agree that the terms of the Model Contract Clauses (also called the Standard Contractual Clauses) adopted by the European Commission in Decision 2004/915/EC (hereinafter the "Controller Model Clauses" or the "Model Clauses") are incorporated by reference as if set forth herein. If this Agreement and/or Order involves the cross-border transfer of Buyer Personal Information from any country in the EEA/CH to outside the EEA/CH but the Supplier will not act as a Controller, then the Buyer and Supplier agree that the terms of the Model Contract Clauses (also called the Standard Contractual Clauses) adopted by the European Commission in Decision 2010/87/EU (hereinafter the "Processor Model Clauses" or the "Model Clauses") are incorporated by reference as if set forth herein. Notwithstanding the foregoing, Buyer and Supplier agree that:

- 20.5.1 The Model Clauses may be reformatted as a stand-alone document with the signatures to this Agreement and/or Order or the parties will execute the Model Clauses as a separate stand-alone document. The stand-alone Model Clauses may be filed with regulators and/or used for any other legally permissible purpose and have the effect as if signed directly.
- 20.5.2 If either party seeks to register the Model Clauses with a regulator and the regulator rejects the registration, the parties shall work together to modify the exhibits to the Model Clauses to address the regulator's requirements.
- 20.5.3 If any of the terms of the Model Clauses conflict with any terms of this Agreement and/or Order, the Model Clauses shall prevail.
- 20.5.4 If Supplier engages any subcontractors that will access Buyer Personal Information covered by the Model Clauses, the Supplier shall ensure that transfers to the subcontractor comply with the Model Clauses.

## **21. Compliance with Laws**

- 21.1 Supplier shall comply with all applicable national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. anti-boycott laws, including (i) the supply of Services, and (ii) the configuration or content of Services for the use intended by Buyer.
- 21.2 Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.
- 21.3 Supplier agrees to comply with Buyer's environmental, health and safety standards, requirements and restrictions during Supplier's performance hereunder and when at Buyer's jobsites, including, without limitation, adhering to Buyer's safety instructions, notifying Buyer prior to the commencement of work and providing Buyer with any test reports or results related to Services, as applicable. Supplier agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements



restricting the use of any hazardous substances, all reasonably necessary documentation to verify the material composition, on a substance by substance basis including quantity used of each substance, of any Services ordered by Buyer and/or of any process used. Separately and/or alternatively, Supplier agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Services ordered by Buyer and/or any process used, do not contain particular hazardous substances specified by Buyer.

- 21.4 Supplier shall comply with Data Privacy Laws and shall be responsible for providing any notice required by law to the data subjects whose personal data it provides to Buyer.

## **22. Compliance Covenants**

- 22.1 Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities or otherwise) to Buyer's employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Supplier.

- 22.2 Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with these Terms and Conditions, the Agreement or any Order.

- 22.3 Supplier hereby further agrees that:

22.3.1 Supplier shall avoid and refrain from all activities that would place Supplier in a position where its judgment in its service on behalf of Buyer may, or may appear to, be biased or where Supplier could obtain, or appear to obtain, an unfair competitive advantage (all referred to as "Conflicts of Interest");

22.3.2 Neither Supplier nor, where applicable, any individuals used by the Supplier in the performance of the Services hereunder, is subject to post-employment or similar "revolving door" restrictions imposed under rules established by any government, including the U.S. Government, that might prohibit or impact the effective performance of the Services for or on behalf of Buyer; and

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

## **23. Supplier Code of Conduct**

Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the United Technologies Corporation Supplier Code of Conduct available at the UTC Supplier Site at the following URL <http://www.utc.com/Suppliers/Pages/Supplier-Code-of-Conduct.aspx> ("Supplier Code of

Conduct”). Supplier shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate) and implementation of corrective actions for violations of law, regulations, this Agreement, an Order, or the expectations set forth in the Supplier Code of Conduct; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

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

## **24. International Trade Compliance**

24.1 Compliance with International Trade Compliance (“ITC”) Laws. Supplier shall comply with all ITC Laws.

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

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

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

24.2.2.1 such person or entity is identified as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government or any non-U.S. government or union of states (e.g., European Union); and

24.2.2.2 the reason(s) for such embargo, sanction, debarment or denied party designation apply to the production activities or Services subject to this Agreement;

24.2.2.3 except where such embargo, sanction, debarment or denied party designation conflicts with the anti-boycott laws of the United States.

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

- 24.3 **Export Licensing Responsibility.** If this Agreement requires either Party to obtain government-approved export authorization to facilitate activities and obligations set forth under this Agreement, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with applicable government regulations. The Parties shall without delay respond to requests for supporting documentation, including clarifying questionnaires or any other requested information necessary to secure government authorization. Each Party, as applicable, shall be individually responsible for obtaining required documentation or other information from any third party required by such Party to perform its obligations under this Agreement. Failure to obtain any required documentation or information from a third party shall result in the third party's exclusion from the government authorization. The Parties shall exchange copies of all government export authorizations related to the Technical Data, or Services, and all provisions or conditions or information relating to the authorization, including but not limited to, any restriction on sublicensing, retransfer, resale or re-export, any requirement for non-disclosure agreements, and any limitation on individuals having access to Technical Data, or Services. Each Party, as applicable, shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related paperwork and documentation (e.g., Destination Control Statements, Electronic Export Information filed via Automated Export System) are properly completed and timely filed.
- 24.4 **Export and Import Classification.** Where known, or where Supplier is the design authority for the Technical Data or Services that are subject to this Agreement, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number, (ii) either (a) the United States Munitions List ("USML") category of such Technical Data or Services that are controlled by the ITAR, or (b) the Export Control Classification Number ("ECCN") of such Technical Data or Services that are controlled by the EAR, including the ECCN of components comprising the Technical Data and/or Services if such classification differs from the ECCN of the Technical Data and/or Services, and (iii) any analogous classification under any other applicable law. Upon request, Supplier shall provide Buyer annually with its DDTC registration expiration date.
- 24.5 **Brokering.** Supplier acknowledges that it shall not engage in brokering activity as that term is defined in 22 C.F.R. § 129.2 in conjunction with activity authorized pursuant to this Agreement.
- 24.6 **Technical Data Transfer.** Supplier shall not export, re-export, transfer, disclose or otherwise provide physical or electronic access to Technical Data to any person (including unauthorized third-party IT service providers) not authorized to receive

Technical Data under existing ITC Laws and/or export authorization, or modify or divert such Technical Data to any military application or other end-use prohibited by applicable ITC Laws. Supplier shall develop and implement IT security procedures which ensure that Technical Data is accessible only by authorized persons. Any subcontracts for the provision of Technical Data, or the provision of Services shall contain all the limitations of this Section and shall require compliance with all applicable export licenses or authorizations.

- 24.7 Destruction of Technical Data & Services. Upon completion of performance under the Order, and expiration of recordkeeping obligations under this Agreement, Supplier and its suppliers shall destroy or return to Buyer all Technical Data and all Services (ie. related goods), as instructed by Buyer. With respect to Technical Data: (a) destruction applies to both physical and electronic copies of Technical Data, including archived copies, (b) destruction may include cross-cut shredding, burning or chemically reverting to pulp or other similar methods, which preclude use in full or partial form, and (c) electronic copies of Technical Data must be permanently deleted from all servers, systems and local devices.
- 24.8 Required Notices. Supplier shall promptly notify Buyer if it becomes aware of any failure by Supplier or its suppliers to comply with this ITC Section and shall cooperate fully and promptly with Buyer in any investigation of such failure to comply. Supplier shall also promptly inform Buyer of any name change, address change or change in ownership or control of Supplier.
- 24.9 Technology Control Plan. When the terms of this Agreement require access to or possession of Technical Data controlled under the ITAR or at an anti-terrorism level or higher under the EAR, or the equivalent level of controls under applicable and governing non-U.S. export regulations, Supplier shall create and follow a Technology Control Plan ("TCP") that, at a minimum, incorporates the following elements: (i) facility security; (ii) international trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) denied party screening as defined in this Section; and (vi) personnel oversight (including without limitation, oversight of non-U.S. persons, dual third country nationals, employees, and visitor management). Supplier shall make a signed copy of the TCP available to Buyer within 30 days of request.
- 24.10 This Section shall apply to transactions between Pratt & Whitney Canada ("P&WC") and Supplier:
- 24.10.1 Supplier certifies that none of the Technical Data or Services subject to the Order are controlled by the ITAR. In making its classification, Supplier may assume, to the extent that P&WC is the design authority, the design is not ITAR-controlled, unless P&WC specifically indicates otherwise. Notwithstanding any other provision in the Agreement or the Order, no Technical Data or Services controlled under the ITAR shall be transferred to P&WC.
- 24.10.2 In the event that Supplier's Technical Data or Services are controlled under the ITAR other than as the sole and direct result of P&WC's design, act or omission, Supplier shall: (a) without delay, notify P&WC in writing and immediately cease all shipments of such ITAR-controlled Technical Data or Services until the necessary Authorizations are duly issued to Supplier (with a copy to P&WC) and

P&WC's written consent for such shipments has been obtained; and (b) at its own cost, with no change in price and within a timeframe compatible with P&WC's business needs, replace or substitute the ITAR-controlled Technical Data or Services with a substitute that is not ITAR-controlled, while fulfilling all requirements under the Agreement or the Order.

- 24.11 Security Programs: Supplier shall comply with all requirements of the border security programs of the destination country (e.g. Customs Trade Partnership Against Terrorism (C-TPAT), Authorised Economic Operator (AEO), Partners in Protection (PIP), etc.
- 24.12 Customs Brokers: With respect to pricing terms for any Order that includes Customs Brokerage Services, such Services shall be quoted and charged at a fixed sum. In no event shall an Order for Customs Brokerage Services provide or allow for contingent or success fees. For purposes of this Agreement, "Customs Brokerage Services", shall mean Services whose performance shall involve transactions with customs officials or other government agencies to import goods into a country on behalf of Buyer pursuant to this Agreement. Customs Brokerage Services shall include, but are not limited to, preparation and submission of documents; classification and valuation of goods, as specifically authorized by Buyer; payment of duties, taxes or other charges; and clearance of goods into the importing country in accordance with applicable government requirements.

**25. Disaster Recovery**

As reasonably directed by Buyer, Supplier shall develop and maintain a Disaster Recovery Plan acceptable to Buyer for the recovery and continuation of business related to the supply, design, development, certification, use and/or support of the Services furnished hereunder, in the event of a disaster or emergency. The Disaster Recovery Plan shall, among other things, prevent or limit the interruption of the Services in conformity with the requirements set forth herein. Supplier shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

**26. Offset**

Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by Supplier for the Order, for satisfying international offset obligations of Buyer, Buyer's Affiliates, or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by the Order or the subcontracting of the Order only upon Buyer's written approval.

**27. Assignment and Change in Control**

- 27.1 Neither this Agreement nor any interest hereunder shall be assignable by, or otherwise transferred, by either party in whole or in part to a third party, by way of contract, operation of law, change in control of such party or otherwise unless such assignment or transfer 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 Agreement pertains or to any third party provider of "integrated

services” that will purchase the Services for Buyer’s benefit without obtaining the agreement of Supplier.

- 27.2 Notwithstanding the foregoing, claims for money due or to become due to Supplier 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 Supplier, a certified copy of the instrument of assignment, and suitable documentary evidence of Supplier’s authority to so assign. However, any payments made to a third party subsequent to Buyer’s receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer’s requirements to make any such payments hereunder.

**28. Subcontracting**

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

**29. Force Majeure**

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

**30. Duty to Proceed**

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

**31. Assurance of Performance**

At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing the Order or Agreement, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request and Supplier shall provide written adequate assurances from Supplier of its ability, desire and intent to continue performing. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Services without interruption in accordance with the Order or Agreement. In particular, Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the performance of the Services itself, and taking other reasonable steps to ensure the Services are performed without interruption according to Buyer's Specifications.

**32. Setoff**

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

**33. Governing Law and Forum**

33.1 The Agreement and any Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of New York, USA without regard to conflicts of law principles, except that Sections 5-1401 and 5-1402 of the New York General Obligations law will apply and except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in the appropriate court in Connecticut, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of an Order or the Agreement.

33.2 Any action or claim by Supplier with respect hereto shall also be brought in Connecticut, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within 30 days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in New York.

#### **34. Dispute Resolution**

34.1 Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under an Order, that Party must provide the other with a written request for dispute resolution. Each Party shall, within 5 calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within 30 calendar days of receipt of the request, vice presidents of each Party shall attempt to resolve the issue within 60 calendar days of receipt of such written request.

34.2 Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.

34.3 The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

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

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

<http://www.utc.com/Suppliers/Pages/Terms-and-Conditions.aspx>

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

35.2 For work performed in the United States under Orders placed by U.S. Buyers, Supplier shall exercise reasonable commercial efforts to use small disadvantaged, minority, and women-owned enterprises. The overall target (i.e., dollar value, percentage of purchases, etc.) for purchases made from disadvantaged, minority, and women-owned suppliers may be negotiated as part of the Order. Upon request Supplier will provide monthly reports to Buyer detailing small disadvantaged, minority, and women-owned enterprises contracted in support of Supplier's obligations hereunder.



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

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

**37. Delays**

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

**38. Remedies**

Supplier shall be liable for any damages incurred by Buyer as a result of Supplier's acts or omissions under this Agreement. Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

**39. Partial Invalidity**

If in any instance any provision of this Agreement or Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement or Order can no longer be preserved by doing so. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable, to the extent permissible by applicable law.

**40. Survival**

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

**41. No Waiver**

No failure of any Party to exercise any right under, or to require compliance with, the Agreement or Order, or knowledge of past performance at variance with the Agreement or Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent

expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

**42. Relationship of the Parties**

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

**43. 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.

**44. 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.

**45. No Conflicts**

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

**46. Order of Precedence**

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

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