

TERMS AND CONDITIONS

For Purchase Orders and Delivery Slips

- 1. FORMATION OF CONTRACT.** This proposed purchase order, which incorporates by reference these Terms and Conditions and all other terms and conditions set forth in this proposed purchase order (collectively, the "Contract"), is Buyer's offer to purchase the goods and services (collectively, the "Services") described in this offer. Acceptance is strictly limited to the terms and conditions included in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. Seller's provision of the Services shall be governed solely by this Contract. Buyer and Seller are referred to herein as a "Party" or collectively as the "Parties."
- 2. SCOPE OF SERVICES.** During the term of this Contract, Seller shall furnish the Services set forth in the Contract.
- 3. WARRANTY.** Seller warrants that all Services performed hereunder shall be performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards. Seller further warrants that all Services performed under this Contract, at the time of acceptance, shall be free from defects in workmanship and conform to the requirements of this Contract. This warranty shall survive inspection, test, and acceptance of, and payment for, the Services and shall begin after Buyer's final acceptance of the Services. Buyer shall give written notice of any defect or nonconformance to Seller within one year from the date of acceptance by Buyer. Buyer may, at its option, either (i) require correction or reperformance of any defective or nonconforming Services, or (ii) make an equitable adjustment in the price of this Contract. If Seller is required to correct or reperform the Services, such correction or reperformance shall be at Seller's expense. Any Services corrected or reperformed shall be subject to this article to the same extent as Services initially performed. If Seller fails or refuses to correct or reperform, Buyer may correct or replace with similar services and charge Seller for any cost to Buyer, or make an equitable adjustment in the price of this Contract.
- 4. TAXES.** Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
- 5. INVOICE AND PAYMENT.** As compensation for Services to be performed by Seller, Buyer shall pay Seller as set forth in this Contract. Buyer shall have no liability for any other expenses or costs incurred by Seller. Payment due date, including discount periods, shall be computed from the date of the later of the scheduled delivery date of Service, the actual delivery date of Service or the date of receipt of a correct invoice. Payment shall be deemed to have been made on the date the Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller. Except for amounts invoiced under articles "Force Majeure" or "Termination for Convenience", Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.
- 6. INDEPENDENT CONTRACTOR.** Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Seller or its agents, representatives or employees be deemed to be agents, representatives or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all Services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.
- 7. DISPUTES.** Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
- 8. FORCE MAJEURE.** Seller shall not be liable for the excess re-procurement costs pursuant to the "Cancellation for Default" article of this Contract incurred by Buyer because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are: (a) acts of God or of the public enemy; (b) acts of the Government in either its sovereign or contractual capacity; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the Seller's failure is caused by a the failure of a subcontractor of Seller and if such failure arises out of causes beyond the reasonable control of both, and if such failure is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the Services from other sources; otherwise Seller shall be liable for excess re-procurement costs.
- 9. TERMINATION FOR CONVENIENCE.** Buyer reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event of such termination, Seller shall immediately cease all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In case of termination for convenience by Buyer of all or any part of this Contract, Seller may submit a claim to Buyer within 60 days after the effective date of termination for fees owing for Services provided prior to the effective date of such termination. In no event shall Buyer be obligated to pay Seller any amount other than the Contract

price for Services provided by Seller, or completed goods accepted by Buyer prior to the date of such termination. The provisions of this article shall not limit or affect the right of Buyer to cancel this Contract for default.

10. CANCELLATION FOR DEFAULT

- a. Buyer may, by written notice to Seller, cancel all or part of this Contract: (i) if Seller fails to deliver the Services within the time specified by this Contract or any written extension; or (ii) if Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
- b. Seller shall continue Services not canceled.
- c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest. Seller shall not be entitled to any profit for partially completed good or materials.
- d. Buyer shall pay the Contract price for completed goods accepted. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- e. Buyer may elect to re-procure the Services or Goods at Seller's expense.

11. ASSIGNMENT, DELEGATION AND SUBCONTRACTING. Seller shall not assign (whether voluntary, involuntary, by merger, change of control, consolidation, dissolution, operation of law, transfer, or any other manner) any of its rights or interest in this Contract or subcontract for all or substantially all of its performance of this Contract without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment.

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

13. ACCESS TO PLANTS AND PROPERTIES. Seller shall comply with all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer.

14. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY. Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the Seller's provision of the Services and/or sale or use of the Services by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action. Seller will, at its own expense, fully defend such claim, suit or action on behalf of the indemnitees. Seller will have no obligation under this article with regard to any infringement arising from (a) the compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Services for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those Services solely for the purpose for which they were designed or sold by Seller.

15. CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this article that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract and/or any other agreement referencing this Contract, including Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, to fulfill Buyer's obligations under contract and for the purposes of testing, certification, use, sale or support of any goods delivered under this Contract or any other agreement referencing this Contract, including Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and

Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials.

- b. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article.
 - c. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
 - d. The provisions of this article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this Contract.
- 16. PUBLICITY.** Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Services or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.
- 17. GRATUITIES.** Seller warrants that neither it nor any of its employees, agents or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.
- 18. RIGHTS AND REMEDIES.** Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Services to Buyer.
- 19. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls, including the Arms Export Control Act (Title USC., Sec 2751, et seq.) and ITAR (22C.F.R Parts 120-130).
- 20. GOVERNING LAW.** This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State of California.
- 21. GOVERNMENT CLAUSES.** Government clauses applicable to this Contract are incorporated herein either by attachment to this document or by some other means of reference.
- 22. PACKING AND SHIPPING.** Seller shall pack the goods and materials to prevent damage and deterioration. Charges for containers and packing are included in the price, unless otherwise agreed.
- 23. QUALITY AND DOCUMENT CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Services purchased under this Contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Buyer supplied documents are unique to the item purchased under this specific Contract and are to be returned to Intertrade or destroyed and shall not to be retained for use on subsequent orders. Quality documents pertaining to this Contract shall be retained in good order for a minimum period of seven years (unless otherwise specified on Contract) from last Contract shipment date.
- 24. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE, AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the customers of Buyer. Seller shall flow down this requirement to all levels of the supply chain as applicable. Seller shall cooperate with any such Buyer-directed inspection, surveillance, test or review. Buyer and Seller shall negotiate reasonable charges when such activities are required. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.
- 25. INSPECTION.**
- a. Services shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work. Buyer and Seller shall negotiate reasonable charges when such inspections are required
 - b. Seller shall maintain an inspection system acceptable to Buyer for the Services purchased under this Contract.
 - c. If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
 - d. Seller shall flow down applicable requirements in the purchase order to all levels of the supply chain including buyer's Customer's requirement.

- 26. ACCEPTANCE.** Buyer shall accept the Services or give Seller notice of rejection within a reasonable time after the date of delivery, notwithstanding any payment or prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Contract or impair any rights or remedies of Buyer or Buyer's customers, including revocation of acceptance.
- 27. REJECTION.** If Seller delivers non-conforming Services, Buyer may require Seller to promptly correct or replace the non-conforming Services. Redelivery to Buyer of any corrected or replaced Services shall be at Seller's expense. In addition, Buyer may (i) correct the non-conforming Services or (ii) obtain replacement Services from another source at Seller's expense. Seller shall not redeliver corrected or rejected Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. All repair, replacement and other correction and redelivery shall be completed as Buyer may reasonably direct.
- 28. SELLER NOTICE OF DISCREPANCIES.** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process, materials, data or drawings are discovered or suspected which may affect the Services delivered or to be delivered under this Contract.
- 29. SCHEDULE.** Seller shall strictly adhere to the schedules specified in this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible. Seller shall not deliver Services prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.
- 30. SUSPENSION OF WORK.** Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed 90 days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" article of this Contract; (iii) cancel this Contract in accordance with the "Cancellation for Default" article of this Contract; or (iv) extend the stop work period.
- Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.
- 31. FINANCIAL RECORDS AND AUDIT.** Seller shall retain all financial records and documents pertaining to the Services for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include, without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all such records related to pricing, performance and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.
- 32. CLAIMS ADJUSTMENT.** Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.
- 33. COUNTERFEIT PARTS PREVENTION.** Seller represents and warrants by acceptance of the Contract and certifies with each shipment of deliverables that only new and authentic materials are used and they contain no counterfeit parts. Seller further represents and warrants that it maintains a Counterfeit Parts Prevention program that meets the requirements of the AS5553 Standard for Counterfeit Parts Avoidance.
- 34. NOTIFICATION.** Seller shall notify Buyer in writing within ten (10) days should any of the following occur: (i) Seller's Service resulted in a nonconforming product, (ii) if there are any applicable changes in Seller's Product and/or Process, Changes of Suppliers, or Changes of Manufacturing facility. Buyer's written approval is required prior to shipment under these conditions.
- 35. STANDARDS COMPLIANCE** Seller shall comply and uphold the highest standards ensuring that all persons are aware of their contribution to product or service conformity; their contribution to product safety; the importance of ethical behavior; to terms and conditions, product and non-product related flow down requirements, including noted quality clauses and specific product requirements in the performance of this order.
- 36. ENTIRE AGREEMENT.** This Contract, together with all the purchase orders, change orders, attachments, exhibits, supplements, specifications, and other terms referenced in this Contract, contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Contract. Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.