



## STANDARD TERMS AND CONDITIONS OF PURCHASE NUCLEAR DIVISION

**AUTHORITY AND COMMUNICATION: ONLY CW'S PURCHASE DEPARTMENT ARE AUTHORIZED TO ISSUE ORDERS AND/OR TO AMEND SUCH ORDERS. NO OTHER DEPARTMENT OF CW IS SO AUTHORIZED TO ACT.**

### 1. APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT

- 1.1. Seller's acceptance of this Order shall be expressly limited to the specifications, and other drawings and documents that are expressly incorporated into it and incorporating these Conditions.
- 1.2. Seller shall indicate its acceptance of this Order in writing. If Seller fails to do so, this Order shall be deemed to be accepted upon the earlier to occur of Seller's commencement of any work in relation to this Order, supply of any Products, or issue of any invoice.
- 1.3. Any terms proposed in Seller's acceptance of CW's offer which add to, vary from or conflict with the Order are hereby objected to.
- 1.4. Any such proposed terms shall be void and the Order shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties.
- 1.5. No modification, or deletion of or addition to these Conditions shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.

### 2. QUALITY

- 2.1. Seller shall not subcontract all or any of the work called for under this Order without CW's prior written consent. Subject to the foregoing, if Seller subcontracts any part of the work under this Order outside of the final destination country where the Products will be delivered or the Services performed, unless otherwise agreed in this Order, Seller shall be responsible for complying with all customs requirements and export control regulations related to such subcontracts.

### 3. CHANGES

- 3.1. CW may, at any time, by a written change order (a "Change Order"), without notice to any sureties, amend any aspect of the Order and/or its performance, including without limitation:
  - a. Drawings, designs, or specifications;
  - b. Methods of shipment or packing;
  - c. Place or time of inspection, delivery, or acceptance;
  - d. Type of Products and/or Service ordered;
  - e. The work or service schedules; and
  - f. The amount of any CW furnished property.
- 3.2. If Seller considers that the conduct, statement, or direction of any of CW's employees constitutes a change hereunder, Seller shall notify CW's purchasing department and take no action on the perceived change pending written approval of CW's purchasing department.
- 3.3. Only CW's purchasing department has authority to approve a change, which approval shall be effective only if reduced to writing. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance.
- 3.4. Seller shall, upon receipt of a valid Change Order, promptly advise CW of any effect thereof on the provisions of this Order, the performance of the work, including cost and/or schedule. If any such Change Order causes an increase or decrease in the cost of or time required for performance of this Order, whether or not changed by the Change Order, Seller shall promptly prepare and submit to CW an estimate of the increase or decrease in the applicable fees and/or time for performance necessitated by such Change Order. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such Change Order is received by Seller and any claim may only include reasonable costs and schedule impact that will necessarily be incurred as a direct result of the Change Order. CW- I shall make an equitable adjustment in writing to the Order price and/or delivery schedule.
- 3.5. Upon receipt of a Change Order issued by CW, Seller shall implement same and proceed diligently with its execution notwithstanding that agreement may not have been reached on an equitable adjustment. Neither anything in this article nor a failure to agree on an equitable adjustment shall excuse Seller from proceeding with performance of this Order as changed by a Change Order.
- 3.6. Seller shall notify CW in writing in advance on each occasion of any and all changes to: (i) the Products and/or Services, including without limitation their specifications, components and/or composition; (ii) the process; (iii) plant and/or equipment/tooling changes or moves; (iv) the location of any work performed hereunder; and/or (v) suppliers and/or subcontractors. No such change shall occur until CW has had the opportunity, at Seller's cost, to conduct such audits, surveys and/or testing necessary to determine the impact of such change on the Products and/or Services and has approved such change in writing. Seller shall be responsible for obtaining, completing, and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by CW. No claim by Seller for adjustment to the schedule and/or price shall be allowed as a result of Seller's compliance with this Section; or CW's approval or non-approval of any requested change made by Seller.
- 3.7. **NOTWITHSTANDING THE ABOVE OR ANY OTHER PROVISION OF THIS ORDER, THE SELLER HEREBY AGREES THAT NO CHANGES TO THE PRODUCTS AND/OR SERVICES THAT MAY BE REQUIRED IN ORDER TO MEET THE SPECIFIED PERFORMANCE REQUIREMENTS OF THIS ORDER SHALL ENTITLE THE SELLER TO ANY ADJUSTMENT IN EITHER PRICE OR DELIVERY.**

### 4. DELIVERY REQUIREMENTS

- 4.1. Unless otherwise stated in the Order delivery terms are to be interpreted in accordance with INCOTERMS 2010. Delivery of the Products and related data and/or documentation and/or performance of the Services in accordance with the delivery schedule stated on the Order is a material requirement of this Order.

## **5. FORECASTS AND COMPENSATION FOR CANCELLED PURCHASES**

- 5.1. CW normally issues delivery plan(s) for the Products. The delivery plans set out the quantities and delivery dates for Products that CW expects to request delivery of within a certain period of time. Firm requests for delivery of Products, including the fixing of the exact quantity and delivery time, is made either as part of the delivery plan or in the Order. Only what CW explicitly has stated, in writing issued to the Seller prior to the delivery in question, to be a firm request for delivery shall be deemed to be a firm request for delivery.
- 5.2. Any quantity included in the delivery plan that exceeds what is a firm request for delivery of Products, or any volume estimates provided elsewhere, shall be considered a forecast only and shall not be binding on CW. However, the Seller is obliged to maintain such production and delivery capacity so that deliveries can be made in accordance with the forecast quantity in the delivery plan.
- 5.3. Seller acknowledges that the industries in which CW operates are characterized by high volatility and Seller represents and warrants that it has the operational and financial capability to manage such volatility and undertakes to use extraordinary, best efforts to make deliveries in accordance with CW's firm orders and maintain production and delivery capacity in accordance with CW's forecasts even where such forecasts and firm orders are modified.
- 5.4. Seller further acknowledges that neither the existence of a purchase agreement nor any other agreement or document shall obligate CW to issue a delivery plan for the Products or commit to purchase a particular quantity of Products or any Products at all from the Seller.
- 5.5. CW's cancellation of, wholly or partly, or failure to purchase a quantity of a Part that is a forecast pursuant to Clause B of this Section, and therefore non-binding, shall not entitle the Seller to any compensation, unless otherwise agreed between the Parties in writing, and such cancellation or failure to purchase shall under no circumstances be considered a termination of a purchase agreement.
- 5.6. The Seller shall immediately inform CW if there is a risk of non-compliance with the most recent delivery plan issued by CW. Recognizing that time is of the essence, the Seller will take all necessary actions, both ordinary and extraordinary, to ensure timely deliveries.
- 5.7. If the Seller is unable to meet CW's need for the Products, the Seller shall, at its own cost, find alternative supplies for CW in consultation with CW. Actual procurement from the alternative supplier is subject to CW's final written approval.
- 5.8. Should CW cancel, wholly or partly, or fail to purchase a quantity of a Product for which CW's order is firm in accordance with Clause A of this Section, CW shall compensate the Seller for reasonable costs relating to such cancelled quantity. In calculating such costs, the Seller shall not receive compensation to the extent that the Product - or components, semi-manufactured items or raw materials intended for it - can be used for other deliveries to CW or another party, or for another purpose. CW's obligation to compensate for cancellations is conditional upon the Seller submitting specified claims for compensation in writing not later than six (6) weeks after the Seller should have been able to establish the costs relating to the cancelled quantity.
- 5.9. During the term of the purchase agreement, the Seller undertakes to deliver Products according to delivery requests made in Orders and/or delivery plan(s) issued by CW. The Seller acknowledges that it shall not be entitled, irrespective of any language to the contrary in the actual Order or delivery plan(s), to refuse to deliver requests for delivery of Products made as part of the delivery plan(s) or in Orders placed, as long as the terms of such delivery requests are consistent with the terms of the purchase agreement.

## **6. TIME IS OF THE ESSENCE**

- 6.1. Upon request Seller will provide CW with all up-to-date information relating to the progress in completing the Order in a form and frequency acceptable to CW.
  - a. Seller will, at its expense, deliver by express or air shipment or by the most expeditious way if the delivery schedule is endangered in whole or in part for any reason. Such delivery will be DDP to the delivery location stated by CW, notwithstanding the Seller's delivery term and/or location stated on the Order. In the event that Seller fails to do so, CW may undertake the transportation of such items at Seller's cost and expense.
- 6.2. Seller shall not, without CW's prior written consent, manufacture or procure materials in advance of Seller's reasonable flow time or deliver in advance of schedule. CW reserves the right to reject all or any part of any delivery that varies from the quality or quantity authorized by CW for shipment. Seller shall give notice of shipment to CW at the time of delivery of any shipment of Products to a carrier for transportation. Seller shall co-operate with CW to minimize the duties payable on shipments, including routing to protect lowest tariff rate. CW will have no liability for payment for Products delivered to CW that are in excess of quantities specified in this Order and delivery schedules. Such Products shall be subject to rejection and return at Seller's expense and risk, including transportation both ways, or may be accepted by CW with the obligation for payment deferred until the agreed upon payment period after delivery should have been made pursuant to the delivery schedule.

## **7. PRICES AND PAYMENTS**

- 7.1. As compensation for the Products purchased from Seller and/or the Services performed by Seller, CW shall pay Seller as set forth in this Order and in the currency set forth in this Order. Unless expressly stated in this Order, the prices stated in this Order are:
  - a. firm and fixed for the delivery period shown;
  - b. not subject to price escalation for any reason;
  - c. inclusive of the costs of all tests and inspection;
  - d. inclusive of the cost of packing, packaging, and crating required;
  - e. inclusive of any and all applicable sales, use, services or similar taxes, surcharges, duties, levies and other fees, charges, and expenses, whether levied in the country of manufacturing, the country from where the Products and/or Services are provided, or any country through which the Products are transported; and
  - f. inclusive of any transportation expenses, export charges, import charges, document processing costs and fees and all other charges.

- 7.2. Unless otherwise stated in the Order, payment due date, including discount periods, shall be net 60 days computed from the date of the later of: the scheduled delivery date; the actual delivery date; or the date of receipt of a correct invoice. Payment shall be deemed to have been made on the date CW's check is mailed or payment is otherwise tendered. Seller shall promptly repay to CW any amounts paid in excess of amounts due Seller. Seller warrants that the prices for any Products and/or Services under this Order do not exceed the prices for goods and/or services offered by Seller to third parties on similar terms and conditions.

## **8. TRACEABILITY**

- 8.1. Seller shall maintain lot traceability for all products supplied on this Order with the exception of metallic materials and/or metalworks. Packing slips shall reference traceability number or batch number.

## **9. INSPECTION**

- 9.1. Notwithstanding
- a. payment,
  - b. passage of title or
  - c. prior inspection or test,
  - d. all Products may be subject to final inspection and acceptance or rejection by CW at CW's facility.
- 9.2. At all reasonable times, including the period of manufacture, CW, its customers and/or representatives may inspect and/or test the Products to be furnished hereunder at the places where the work is being performed, including those of the Seller's suppliers, and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and test.
- 9.3. CW may inspect 100% or a sample of all Products or any lot of Products at CW's option.
- 9.4. In case any Products and/or Services are defective or otherwise not in conformity with Order requirements, CW may, in its sole discretion and without waiving any other remedies that may be provided hereunder or at law:
- a. reject and return the supplies and material at Seller's expense and risk for refund of invoice price or for correction or replacement;
  - b. rework same to conform them to Order requirements and charge Seller the cost occasioned thereby;
  - c. require that Seller re-perform non-conforming Services;
  - d. equitably adjust the price; or
  - e. terminate this Purchase Order in whole or in part for default. All handling, storage, freight (both ways) and demurrage charges shall be at the cost of Seller.
- 9.5. Payment for Products and/or Services rejected hereunder shall be reimbursed by Seller within seven (7) days of written request. Any inspection, approval, or failure to inspect shall not relieve Seller from responsibility for providing Products and/or Services not in accordance with the Order requirements nor impose any liability on CW.

## **10. WARRANTY**

- 10.1. Seller warrants that all Products and/or Services delivered under this Order shall:
- a. be free of any claims of any nature, including without limitation title claims;
  - b. be of merchantable quality;
  - c. be free from defects in design, material, and workmanship;
  - d. conform to all specifications, drawings, designs, descriptions, and samples provided by the Seller and/or included in the Order; and
  - e. suitable for the purposes intended by CW.
- 10.2. Seller further warrants that the Services will be provided in a competent and professional manner and in accordance with the highest standards of the Seller's industry. Any inspection, delivery, review, approval of designs and/or other documentation furnished by Seller, or payment shall not relieve Seller of its obligations under any provision of this Order, including these warranties.
- 10.3. Seller's warranties hereunder shall run to CW, its successors, assigns, customers and users of the Products and/or Services and shall extend to any defect or nonconformity arising within four (4) years after delivery of the Products to CW or completion of the Services or three (3) years after the Products are first placed in use, whichever occurs first.
- 10.4. With respect to Products not in accordance with any such warranties, CW, without waiving any remedies provided by law and/or under this Order, may require Seller: (i) to correct or replace Products, or re-perform Services at Seller's risk and expense; or (ii) to refund such portion of the Order price as is equitable under the circumstances. Items or material corrected or replaced shall be subject to the provisions of this Order in the same manner as those originally delivered hereunder. If Seller refuses or fails promptly to correct or replace such Products, or to re-perform Services when requested by CW, CW may, by contract or otherwise, correct or replace such Products or procure substitute Services and Seller agrees to reimburse CW for the costs and expenses incurred thereby.
- 10.5. Any repaired or replaced Product, or part thereof, or re-performed Services shall carry warranties on the same terms as set forth above, with the warranty period being the greater of the original unexpired warranty or three years after repair or replacement. Any warranty period shall be extended by any period(s) during which the Products have been out of operation.
- 10.6. CW, without waiving any remedies provided by law and/or under this Order, may require Seller to pay or reimburse to CW any costs, expenses and/or damages of any kind incurred by it and/or its customers and/or end-users in connection with the removal, re-installation, shutdown and other actions related directly or indirectly to the correction or replacement, or otherwise by reason of supply by Seller of defective Products.

## **11. SUSPENSION AND EXCUSABLE DELAYS**

- 11.1. CW may from time to time and at any time require Seller to suspend performance hereunder completely or partially for whatever length of time CW may elect. The time for completion by Seller shall be extended by each period that the completion date is necessarily delayed solely by (i) the action of CW. CW shall not be liable for any damages suffered by Seller due to delays and suspensions. Notwithstanding the foregoing, CW may reimburse Seller for its reasonable and verifiable direct costs of restarting an Order suspended for the convenience of CW.

- 11.2. Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence (“Force Majeure”) **PROVIDED THAT:**
- a. the Products to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule;
  - b. Seller furnishes prompt written notice to CW of the occurrence of any such cause that will or may delay Seller’s performance; and
  - c. uses all reasonable efforts to mitigate the impact of such event of Force Majeure.
- 11.3. Any delay or failure to perform caused by the default of a supplier of the Seller at any lower tier shall be excused only if it is beyond the control of both Seller and such supplier and without the fault or negligence of either. If delivery of any Products or performance of Services is delayed by Force Majeure for more than three (3) months, CW may, without any additional extension, cancel all or part of any Order with respect to the delayed Products and/or Services, and exercise any of its remedies hereunder or at common law.

## 12. INSURANCE

- 12.1. In addition to, and without limiting any liability, warranty and/or indemnity obligation contained in this Order, Seller shall, as a separate obligation, carry and pay for insurance of the types and in the minimum amounts as follows covering items, risks, and operations related to or required to fulfil this Order, with insurance carriers acceptable to CW:
- 12.2. Workers’ Compensation in an amount no less than the applicable statutory minimum requirement and Employer’s Liability Insurance in an amount of no less than \$1 million.
- 12.3. Commercial General Liability Insurance on an “Occurrence Form” with a combined single limit of no less than \$1 million per occurrence, \$2 million in the aggregate, including coverage for:
- a. premises and operations;
  - b. products and completed operations;
  - c. explosion, collapse, and underground damage;
  - d. sudden and accidental pollution; and
  - e. contractual liability.
- 12.4. Business Automobile Liability Insurance covering liabilities for the death of or injury to any one person and liabilities for loss of or damage to property resulting from any one accident with a combined single limit of not less than \$1 million per occurrence.
- 12.5. Excess liability covering the matters described in and in excess of the coverage provided above with a limit of no less than \$5 million per occurrence and in the aggregate.
- 12.6. If Services are to be provided, Professional Liability (errors and omissions liability) Insurance with a limit of not less than \$5 million per occurrence.
- 12.7. CW and its subsidiaries and affiliates shall be named as an additional insured on all insurance required to be maintained hereunder except for Workers’ Compensation Insurance and Professional Liability. In addition, all of the insurance policies required to be maintained hereunder shall be primary to any other insurance of CW and shall provide that all rights of subrogation against CW and its Affiliates are waived when permitted by applicable law.
- 12.8. Prior to commencing work under an Order, an annually thereafter, Seller shall furnish CW Certificates of Insurance that document the insurance required to be maintained hereunder. These certificates shall provide that such coverage shall not be cancelled or changed without thirty (30) days advance written notification to CW from the carrier(s). In the event that any of the Products and/or Services provided under an Order are provided or performed by a subcontractor, Seller will cause each such Subcontractor to comply with the obligations imposed upon Seller pursuant to this paragraph as if such subcontractor were Seller hereunder.

## 13. PACKING/PACKAGING

- 13.1. Seller shall mark, pack, and ship all materials in accordance with the requirements of the Order, any supplemental instructions of CW, and otherwise in compliance with transportation regulations and good commercial practice for protection and shipment.
- 13.2. Seller shall secure the most advantageous transportation service and rates thereon. A master packing sheet in duplicate shall accompany each shipment. Packing sheets shall not show any prices. CW- I’s count or weight shall be accepted as final and conclusive on shipments not accompanied by packing sheets.
- 13.3. Each container shall have plainly marked on its exterior the following:
- a. name of Seller;
  - b. name of CW;
  - c. Purchase Order number;
  - d. description, specification, quantity, weight of parts or units in container;
  - e. part number;
  - f. date of shipment;
  - g. bill of lading number;
  - h. packing sheet number;
  - i. shipping container number in lot;
  - j. number of containers in lot; and
  - k. any other information required by CW.
- 13.4. Invoices shall be submitted in triplicate to CW’s accounts payable department. Bills of lading, express receipts or other evidence of shipment containing the information required above shall be mailed to CW on date of shipment. The Purchase Order number and part number (including blueprint change letter), or (where there is no part number) a description of material, shall appear on all invoices, packing sheets, bills of lading, express receipts correspondence and other instruments in connection with this Order, and where Seller and shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment.

#### **14. PROPERTY OF CW**

- 14.1. Unless otherwise agreed in writing, all tangible and intangible property, including, but not limited to, equipment, tooling, jigs, dies, maskworks, materials, parts, packaging, drawings, documents, specifications, information or data of any description, computer software, intellectual property which is:
- furnished to Seller by CW or a third party acting on its behalf; or
  - specifically paid for by CW; or
  - any replacement thereof shall be and remain CW's personal property.
- 14.2. Any property furnished by CW is provided "as is" without any warranty whatsoever, express, or implied, for use by Seller at its own risk. Such property shall be adequately identified by Seller as CW's property, and in line with any instructions of CW, safely stored separate and apart from Seller's property and properly maintained by Seller. Seller shall comply at all times with any handling and storage requirements supplied by CW for such property. Seller will inspect CW's property prior to use. Seller shall only allow competent, trained Seller personnel to use such property and will train and supervise its employees and other authorized users of such property in its proper and safe operation. Seller shall use CW's property only to meet CW's orders, and shall not use it, disclose it to others or reproduce it for any other purpose. Such property, while in Seller's care, custody or control, shall be held at Seller's risk, shall be kept free of encumbrances and insured by Seller at Seller's expense in an amount equal to the replacement cost thereof with loss payable to CW and shall be subject to removal at CW's written request, in which event Seller shall prepare such property for shipment and redeliver to CW in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. CW shall have the ability at any time to enter Seller's premises for the purposes of removal of such property. The Seller will provide copies of drawings of such property to CW on request and at no extra charge. CW hereby grants a non-exclusive, non-assignable license, which is revocable with or without cause at any time, to Seller to use any information, drawings, specifications, computer software, know-how and other data furnished or paid for by CW hereunder for the sole purpose of performing this Order for CW.
- 14.3. Notwithstanding the generality of paragraph A above, CW shall own exclusively all rights in ideas, inventions, works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. Seller will free of charge promptly identify and disclose such inventions or improvements to CW and execute or obtain the execution of any papers as may be necessary to perfect ownership of the inventions or improvements to CW or as may be necessary in the obtainment, maintenance or enforcement by CW of any patent, trademark, copyright, trade secret, mask work right or other proprietary right pertaining to the inventions or improvements. All such intellectual property which is protectable by copyright will be considered work made for hire for CW (as such term is defined in Section 101 of the United States Copyright Act 1976). The confidentiality provisions and the obligations of this paragraph shall survive termination or completion of this Order.

#### **15. NEW MATERIAL**

- 15.1. Seller warrants that none of the Products furnished under this order are surplus, used, remanufactured, or reconditioned or of such age or so deteriorated as impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this Order.

#### **16. FREE ISSUE MATERIAL**

- 16.1. Where Products are manufactured from material supplied by CW, unless agreed otherwise in writing, replacements for any spoiled or lost material will be ordered from CW at the Seller's liability and expense. If the Seller for whatever reason scraps material or components supplied free issue by CW the Seller shall be responsible for all costs incurred by CW including without limitation material cost and added value.

#### **17. SERVICE AND REPLACEMENT PARTS:**

- 17.1. Seller will sell to CW goods necessary for it to fulfil its current model service and replacement parts requirements at the price(s) set forth in this contract. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15-year period after CW completes current model purchases, Seller will sell goods to CW to fulfil CW's past model service and replacement parts requirements. Unless otherwise agreed to by CW, the price(s) for goods shall be as agreed to by the parties. When requested by CW, Seller shall make service literature and other materials available at no additional charge to support CW 's service part sales activities.

#### **18. DOCUMENTATION AND MANUALS**

- 18.1. Notwithstanding any specific requirements of the Order, Seller shall also provide free of charge all documentation reasonably required by CW to use, operate, and maintain the Products and/or Services. Except as may be specified in the Order, all documentation, installation, maintenance, and operations manuals will be in English. Any translation requirements are Seller's responsibility.

#### **19. CONFIDENTIALITY; PUBLICITY; INVENTIONS**

- 19.1. Seller shall keep confidential any:
- tangible or intangible property furnished by CW in connection with this Order, including without limitation any drawings, specifications, data, goods, and/or information; and
  - technical, process, proprietary or economic information derived from drawings or 3D, or other models owned or provided by CW (the "Confidential Information") and shall not divulge, directly or indirectly, the Confidential Information for the benefit of any other party without CW's prior written consent.
- 19.2. Confidential Information shall also include any notes, summaries, reports, analyses, or other material derived by Seller in whole or in part from the Confidential Information in whatever form maintained (collectively, "Notes"). Except as required for the efficient performance of this Order, Seller shall not use or permit copies to be made of the Confidential Information without CW's prior

written consent. If any such reproduction is made with prior written consent, Seller shall ensure that a notice referring to the foregoing requirements shall be provided on such reproduction.

- 19.3. The restrictions in this Section regarding the Confidential Information shall be inoperative as to particular portions of the Confidential Information disclosed by CW to Seller if such information:
- a. is or becomes generally available to the public other than as a result of disclosure by Seller;
  - b. was available on a non-confidential basis prior to its disclosure to Seller;
  - c. is or becomes available to Seller on a non-confidential basis from a source other than CW when such source is not, to the best of Seller's knowledge, subject to a confidentiality obligation with CW; or
  - d. was independently developed by Seller, by a party who has not had access to any of the Confidential Information, and Seller can verify the development of such information by written documentation. Upon completion or termination of this Order or upon CW's first written request, Seller shall promptly return to CW- I all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Seller) all Notes and any copies thereof. Any knowledge or information, which Seller shall have disclosed or may hereafter disclose to CW and which in any way relates to the Products or Services purchased under this Order (except to the extent deemed to be CW's property as set forth in this Order), shall not be deemed to be confidential or proprietary and shall be acquired by CW free from any restrictions (other than a claim for infringement) as part of the consideration for this Order, and notwithstanding any copyright or other notice thereon, CW shall have the right to use, copy, modify and disclose the same as it sees fit. Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the Products), or release any information concerning this Order or any part thereof or with respect to its business relationship with CW, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order, without CW's prior written consent.

## **20. INTELLECTUAL PROPERTY INDEMNITY**

- 20.1. Seller shall indemnify, defend and hold CW harmless from all costs and expenses related to any suit, claim or proceeding brought against CW or its customers based on a claim that any article or apparatus, or any part thereof constituting Products and/or Services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party.
- 20.2. CW shall notify Seller promptly of any such suit, claim or proceeding and give Seller authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein. Notwithstanding the foregoing, any settlement of such suit, claim or proceeding shall be subject to CW's consent, such consent not to be unreasonably withheld. If use of said article, apparatus, part, device, or process is enjoined, Seller shall, at its own expense and at its option, either procure for CW the right to continue using said article or apparatus, part, process, or device, or replace the same with a non-infringing equivalent.

## **21. INDEMNITY; LIENS**

- 21.1. Seller shall defend, indemnify, release and hold harmless CW, its Affiliates and its or their directors, officers, employees, agents representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, direct damages, costs, expenses, or liabilities (including without limitation claims for personal injury or property or environmental damage, breach of applicable laws, any failure by Seller and/or its suppliers to comply with the provisions of this section entitled EXPORT RELATED REQUIREMENTS claims or damages payable to customers of CW) arising from any act or omission of Seller, its agents, or employees, or subcontractors, except to the extent attributable to the sole negligence of CW. Seller agrees to include a clause substantially similar to this Section in all subcontracts it enters into related to its fulfillment of this Order. Seller further agrees to indemnify CW for any attorneys' fees or other costs that CW incurs in the event that CW has to file a lawsuit to enforce any indemnity or additional insured provision of this Order.
- 21.2. Seller shall promptly pay when due all obligations for labor and material. Seller hereby waives its right to assert any liens and attachments, statutory, constitutional, common law or otherwise, on the facility or the site and shall also discharge at once, or bond or otherwise secure against all liens and attachments which are filed by its subcontractors and vendors of any tier on account of labor performed for supplier or materials, equipment and supplies furnished for Seller in connection with its supply of Products or Services, and shall defend, indemnify, release, reimburse and hold harmless CW and the owners of the premises on which Seller performs Services for CW, from and against all loss, damage, injury, liability and claims thereof resulting directly or indirectly from such liens and attachments.

## **22. EXPORT RELATED REQUIREMENTS**

- 22.1. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2798 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 -2420 (Export Administration Act) and 15 code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively referred to hereinafter as the "Export Laws and Regulations"). Seller represents and warrants that it is either (1) a U.S. person as that term is defined in the Export Laws and Regulations, or (2) that it has disclosed to CW's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- 22.2. Seller shall not give any Foreign Person access to Technical Data or software as those items are defined in the applicable Export Laws and Regulations without the prior written consent of CW. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as CW may reasonably request. No consent granted by CW in response to Seller's request under this paragraph B. shall relieve Seller of its obligations to comply with the provisions of paragraph A or the Export Laws and Regulations, nor shall any such

consent constitute a waiver of the requirements of paragraph A, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

- 22.3. Seller shall indemnify and save harmless CW from and against any and all damages, liabilities, penalties, fines, costs and expenses, including attorneys' fees, arising out of claims, suits allegations or charges of Seller's failure to comply with the provisions of this section entitled **EXPORT RELATED REQUIREMENTS** and breach of the warranty set forth in paragraph A above shall be a material breach of this Order.
- 22.4. The substance of this section entitled **EXPORT RELATED REQUIREMENTS** shall be incorporated into any subcontract entered into by the Seller for the performance of any part of the work under this Order.
- 22.5. **"No Russian Dealings"**
- 22.5.1. This clause has been included in these Conditions and Existing Agreements<sup>1</sup> entered by CW in compliance with the European Union's 12th package of sanctions where, under Article 12g of EU Regulation 833/2014 ("**Russia Ban**"), EU exporters, resellers, promoters and suppliers (together the '*Distributors*') are obliged to state in their '*trading instruments*' (including, without limitation, contracts, purchase orders, website terms, and/or any other instrument utilized by Distributors to trade their Products and Services, together "Distribute" or "Distribution" as the case maybe), a prohibition of re-export of restricted goods to the Russian Federation<sup>2</sup> and provide for adequate measures and remedies to prevent and combat the circumvention of the Russian Ban any other regulations that seek to update or replace the Russian Ban whether such circumvention is direct or indirect (indirect meaning where goods are exported to third countries to be re-exported to Russia).
- 22.5.2. With this clause Seller shall:
- not** sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation, the Products and the Services supplied under or in connection with these Conditions and any Existing Agreement that fall within the scope the Russia Ban; and
  - undertake** its best efforts to ensure that, the purpose of clause 22.5.1a is not frustrated by any third parties further down the commercial chain, including its Distributors; and
  - have implemented** and maintain an adequate monitoring mechanism to detect conduct by any third parties within its trading network, including its Distributors that would frustrate the purpose of clause 22.5.1.
- 22.5.3. Any violation of clause 22.5 (including its subclauses 22.5.1 a to c) **shall constitute a material breach of an essential element of these Conditions and any Existing Agreements which is not capable of remedy** and CW shall be entitled to seek appropriate remedies including (without limitation) immediate termination of and Existing Agreements and subsequent damages.
- 22.5.4. CW shall immediately inform the Customer of any problems in applying clause 22.5 and its subclauses, including any relevant activities by third parties that could frustrate the purpose of clause 22.5.1. CW shall make available to the Customer information concerning compliance with the obligations under this clause 22.5 within five (5) days of such request being made to it unless the parties have agreed otherwise in writing.

## 23. SOFTWARE LICENSE

- 23.1. In the event that any software or software documentation is provided to CW by Seller in any form whatsoever under an Order, and no software license agreement governing this purchase has been signed between CW and Seller, CW and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:
- Subject to the terms and conditions herein, the Seller grants to CW a worldwide, non-exclusive, transferable license to use the software and/or software documentation:
    - in connection with the Products and/or Services being provided pursuant to this Order; and
    - otherwise for CW's intended purposes.
  - Making copies of software or documentation is permitted so long as CW reproduces and includes all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends, both in and on every copy of licensed software and documentation and in any form.
  - This software license is effective as of the date of first delivery hereunder and shall continue until terminated by CW for any reason whatsoever upon thirty (30) days prior written notice to Seller, provided CW ceases using and either returns or destroys Seller software and documentation; or by Seller, if CW does not comply with any of the terms and conditions of this software license and CW fails to remedy such failure within thirty (30) days after having received notice from Seller of such failure.

## 24. TAXES

- 24.1. Unless this Order specifies otherwise, the price of the Products and Services purchased under this Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges, and exactions imposed on or measured by this Order 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 CW has furnished a valid exemption certificate or other evidence of exemption. There shall be no change in any term or condition of the Order (including without limitation the price) on account of any change in taxes of any type applicable to any aspect of this Order.

## 25. TITLE AND RISK OF LOSS

- 25.1. Unless otherwise agreed by the parties, title to materials or Products furnished or to be furnished (or information generated or developed) under this Order shall be deemed transferred to CW or CW's customer as payments are made. Seller shall identify and segregate such materials which are the property of CW, unless waived in writing by CW. In the event payments are made by CW prior to delivery, Seller shall execute and deliver such security agreements, financing statements and other documents as may be deemed

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<sup>1</sup> For the purposes of this document, means any form of terms and conditions that are used by Curtiss Wright and/or its Channel Partners for the sale and Distribution of their Products and Services.

<sup>2</sup> means Russia and any other allies as included in the Russian Ban from time to time.

necessary by CW to protect its rights therein. If title is not transferred in accordance with the foregoing, title shall pass to CW or CW's customer upon delivery to CW's or CW's customer's facility, and acceptance by CW, at the point of delivery.

25.2. Seller shall have risk of loss of the Products until arrival at the destination designated in this Order.

## **26. SETOFF**

26.1. CW shall have the right, without notice to the Seller, to set off any amount due to Seller against any amount due to CW, or CW's Affiliates from Seller. Such right shall be absolute and unconditional in all circumstances, regardless of the contract or entity through which the parties are acting with respect to the set-off obligations and regardless of the existence or adequacy of any other direct or indirect security or any other right or remedy available to CW. The provisions hereof shall not be deemed or construed to limit rights of set-off or liens or similar rights which CW or CW's Affiliates may otherwise have by reason of applicable law or other agreement.

## **27. TERMINATION FOR DEFAULT ETC.**

27.1. CW, without liability, may by written notice of default, terminate the whole or any part of this Order if Seller:

- a. fails to perform within the time specified or in any written extension granted by CW;
- b. fails to make progress which, in CW's reasonable judgment, endangers performance of this Order in accordance with its terms; or
- c. fails to comply with any of the terms of this Order.

27.2. Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default. Upon termination, CW may procure at Seller's expense and upon terms it deems appropriate, goods, software, articles, documents or other materials, and any data or other information or services similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to CW for any excess costs for such similar goods, software, articles, documents or other materials, and any data or other information or services. As an alternate remedy and in lieu of termination for default, CW, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller shall promptly notify CW in writing. CW's rights and remedies in this clause are in addition to any other rights and remedies provided by law or equity or under this Order.

## **28. TERMINATION FOR CONVENIENCE**

28.1. CW may terminate all or any part of this Order at any time by written notice to Seller. Upon termination under this paragraph CW and Seller shall negotiate reasonable termination costs consistent with costs allowable under the Section entitled FORECASTS AND COMPENSATION FOR CANCELLED PURCHASES and identified by Seller within thirty (30) days of CW's termination notice to Seller unless the parties have agreed to a termination schedule in writing. No payment will be made in respect of manufacture or procurement in advance of reasonable flow time, except if and to the extent there has been prior written consent of CW. Upon receipt of a termination notice the Seller will forthwith except as may otherwise be directed by CW: (i) stop work on the undelivered Products and incomplete Services and ensure that no further steps are taken to produce the undelivered Products and/or perform Services; and (ii) use its best endeavors to mitigate any loss it may have incurred as a result of termination.

28.2. immediately with service of formal notice under clause 42 to follow by CW (to the Customer) if it is in breach of any obligation under (or infringement of) Clause 22.5 and 22.6. For added clarity this breach shall be considered as not capable of remedy and notwithstanding any liability caps agreed by the Parties, any damages suffered by CW as a result of a breach of Clause 22.5 by Seller shall never be subject to such cap.

## **29. TERMINATION FOR INSOLVENCY; PROLONGED DELAY**

29.1. If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made or an excused delay (or the aggregate time of multiple excused delays) lasts more than sixty (60) days, CW may immediately terminate this Order without liability, except for Products or Services completed, delivered and accepted within a reasonable period after termination (which will be paid for at the Order price).

## **30. CONTRACTORS WORKING ON SITE**

30.1. Where Seller's employees, agents and/or representatives attend any of CW, CW's Affiliates, their customers,' and/or suppliers' sites, they shall abide by such regulations, including without limitation security and health and safety regulations, as are applicable to their presence on such sites. Where the Seller is contracted to perform a service at any such site, the Seller shall provide to CW- I's reasonable satisfaction evidence of its "safe systems of work" prior to commencing work. Such evidence may include, but shall not be limited to, any applicable risk assessments, method statements, personnel qualifications and a copy of the Seller's health and safety policy statement. Without prejudice to any other right CW may have, CW may prevent from attending or require the removal of any person from any such site.

## **31. COMPLIANCE WITH LAWS**

31.1. (Where the location of CW is North America) Seller in the performance of this Order shall comply with all federal, state and local laws, rules and regulations applicable to or incorporated by reference in this Order, including but not limited to, all applicable environmental protection laws, rules and regulations, all data privacy laws, the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) and the Occupational Safety & Health Act of 1970, as amended ("OSHA"), the International Traffic in Arms Regulations as amended, and all rules and regulations thereunder. Seller is a federal contractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60; 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and/or 60-300; and Executive Order 13201 and the applicable regulations contained in 29 C.F.R. Parts 470 and



471. Each invoice submitted against this Order shall constitute a representation and warranty by Seller that the Products, supply and/or Services were delivered in compliance with all such legal requirements, and if CW is subjected to any liability as the result of Seller's or its Subcontractors' failure to comply with the requirements of this clause, then Seller agrees to indemnify and hold CW harmless to the full extent of any loss, damage or expense resulting from such failure. Seller agrees to furnish information, within seven (7) days of CW's request, regarding payment, offer, or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. 130) with respect to any sale by the CW for which a license or approval is required from the Office of Defense Trade Controls, Department of State or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).

- 31.2. (Where the location of CW is Europe) The Seller shall comply with the requirements of the Health and Safety at Work Act 1974 and any other relevant legislation (including without limitation those relating to the notification of precautions to be observed in relation to Goods and their handling operation and storage). The Seller will ensure that full details of all such precautions shall accompany each consignment of Goods and that CW is notified of all restrictions and/or limitations as to the shelf life of Goods immediately after the Contract comes into effect.
- 31.3. (Applicable to Plant, Machinery and Equipment) In accordance with current Health and Safety Legislation the following requirements are fulfilled:
- the machinery satisfies the essential health and safety requirements.
  - the appropriate conformity assessment has been conducted.
  - the responsible person has issued either a Declaration of Conformity or a Declaration of Incorporation.
  - the CE mark has been properly affixed.
  - the machinery is safe.
  - the manufacturer has carried out research and tests on the machinery and components to ensure that the design and construction is sound.
- 31.4. The Seller shall ensure that hazardous or sensitive substances are clearly marked as such in accordance with Control of Substances Hazardous to Health Regulations 1988 (COSHH) and any subsequent amendment thereof and that any safety precaution data sheets required for their handling are also clearly indicated on packaging and delivered therewith.
- 31.5. Where Products are to be delivered into Europe, the Seller shall ensure that all substances, preparations, and articles supplied conform to the EU Regulation (EC N° 1907/2006) on the Registration, Evaluation and Authorization of Chemicals (REACH) which came into force in June 2007. Ensuring that any substances, preparations, or articles that contain any of the substances detailed on the "Candidate List" published by the European Chemical Agency (ECHA), are detailed on the Health and Safety data sheet supplied with the goods, and that CW is fully informed and agrees to accept these goods.

## **32. GOVERNMENT CONTRACTS**

- 32.1. If this Order is directly or indirectly in connection with the performance of a contract with a Government body, Seller agrees to observe and comply with the provisions of such contract, including without limitation the Renegotiation Act, Walsh-Healy Act and all other laws and regulations applicable to such contract, as such laws and regulations may be amended from time to time. Seller certifies that the prices charged herein do not exceed the maximum amounts permissible under any applicable price regulations, rulings, schedules, or orders promulgated by any duly authorized governmental agency.

## **33. SLAVERY AND HUMAN TRAFFICKING**

- 33.1. Seller hereby certifies that the production of materials incorporated into any product sold or otherwise provided to CW complies with laws regarding slavery and human trafficking of the states, provinces or countries in which Seller's company does business.

## **34. CONFLICT MINERALS COMPLIANCE**

- 34.1. Seller agrees that it will (1) provide CW with the information CW in its sole discretion deems necessary to comply with the requirements of Section 1502 ("the Provision") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") (Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010)) relating to disclosure and reporting obligations concerning the use of "conflict minerals" during each calendar year on or before February 1<sup>st</sup> of the next year and (2) undertake due diligence on its supply chain and any other measures as necessary to obtain the information necessary for CW to comply with such requirements.

## **35. COUNTERFEIT PARTS**

- 35.1. "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to:
- parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer;
  - defective parts and/or surplus material scrapped by the original manufacturer; and
  - previously used parts pulled or reclaimed and provided as "new."
- 35.2. As used herein, "authentic" shall mean:
- genuine;
  - from the legitimate source claimed or implied by the marking and design of the product offered; and
  - manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
- 35.3. Seller represents and warrants that only new and authentic materials are used in products required to be delivered to CW and that the Products delivered and/or Services performed contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by CW. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/Original Component Manufacturers ("OCMs") or through the OEM's/OCM's authorized distribution chain. Seller must make available to CW, at CW's request, OEM/OCM documentation that authenticates traceability of the components to that

applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by CW's Procurement Representative. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. CW's approval of Seller's request(s) does not relieve Seller's responsibility to comply with all Order requirements, including the representations and warranties in this paragraph. Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and CW's approval before parts/components are procured from sources.

35.4. This Section is waived if a bilaterally approved over-riding supply/manufacturing agreement is in place between CW and Seller.

35.5. This Section is waived for "Independent Distributors" meaning a person, business, or firm that is neither authorized nor franchised by an OCM to sell or distribute the OCM's products, but which purports to sell, broker, or distribute such OCM products.

### **36. C-TPAT**

36.1. CW supports the U.S. Custom and Border Protection ("CBP") Customs-Trade Partnership Against Terrorism ("C-TPAT") program. The C-TPAT program is a joint effort between CBP and the trade community to reduce the threat of terrorism by means of protecting the integrity of cargo imported into the United States. As a Seller to CW, your support of C-TPAT is critical to the realization of CW's objectives and to the cooperative endeavor between U.S. importers and CBP. CW requires foreign suppliers of imported goods to scrutinize and, where necessary, develop sufficient security measures within their own supply chain. To the extent that Seller is a foreign supplier of imported goods, it agrees to scrutinize, based on risk, appropriate security measures to be implemented and maintained throughout the supply chain, including out-sourced or contracted elements of the supply chain, such as transportation, conveyance, warehouse, broker, consolidator or other elements. The Seller agrees to work with these business partners to ensure that pertinent security measures are in place and adhered to and, where necessary, develop sufficient security measures with its own supply chain. More information about C-TPAT can be found at [www.cbp.gov](http://www.cbp.gov).

### **37. ETHICS AND COMPLIANCE**

37.1. In connection with its supply of the Products and Services, Seller has and will comply with all anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act (the "FCPA") or any similar law applicable to the location of the supply of the Products (e.g. the UK Bribery Act), and shall conduct its business operations around the world in a lawful and ethical manner.

37.2. Seller shall not

- a. give, offer, promise, receive, request, agree to receive or approve any payment or thing of value directly or indirectly to or from any private or government-affiliated person in order to obtain or retain business improperly, or gain an improper advantage in the conduct of business in connection with the supply of Products, or for any other improper business purpose, or
- b. fail to maintain its books and records accurately or fail to follow its internal accounting controls.

37.3. Seller acknowledges that:

- a. Curtiss-Wright Corporation has posted a copy of Curtiss-Wright Corporate Policy No. 1A, "Code of Conduct – Suppliers & Sellers" on the world wide web at: <http://www.curtisswright.com/investors/corporate-governance/Code-of-Conduct--Suppliers-and-Customers/default.aspx> ; Seller has reviewed a copy of the policy; and
- b. Seller agrees to comply with the provisions of the policy.

### **38. CONFLICTING PROVISIONS**

38.1. In the event of any conflict among the provisions of this Order, the following order of precedence shall apply in interpreting this order:

- a. The text of the Purchase Order.
- b. Any Special or Supplemental Terms and Conditions incorporated by reference in the order.
- c. These Standard Terms and Conditions of Purchase.
- d. Other Contract Documents.

### **39. ASSIGNMENT**

39.1. Seller may not assign this Order or any interest herein (including without limitation payment) without CW's prior written consent. Seller will obtain written acknowledgement by any permitted assignee, subcontractor and/or supplier to Seller of such party's commitment to act in a manner consistent with CW's integrity policies, and to submit to, from time to time, on-site inspections or audits by CW or CW's third party designee as requested by CW without charge.

39.2. Seller shall ensure that any permitted assignee shall be bound by the terms and conditions of this Order.

### **40. WAIVER**

40.1. Failure by CW to assert all or any of its rights upon any breach of these Standard Terms and Conditions of Purchase shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right CW may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

### **41. SEVERABILITY**

41.1. If any provision of these Conditions is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

#### **42. NOTICES**

- 42.1. Any notice to be given under these Conditions shall be in writing and may be hand-delivered (including delivery by courier service such as FedEx or DHL). In the case of the Seller, notice may be sent to its principal place of business or such other address or fax number as the Seller may have provided to CW for this purpose. In the case of CW, notices should be sent to CW at the CW address stated on the Order, marked for the attention of "General Manager," with a copy to Office of the General Counsel at Curtiss-Wright Corporation, 10 Waterview Boulevard, Second Floor, Parsippany, New Jersey 07054, USA.
- 42.2. Unless the contrary shall be proved, notice shall be deemed to have been given, if by hand delivery (including courier) during working hours on a working day, when left at the relevant address, and otherwise on the next working day after delivery.
- 42.3. All notices and communications under or in connection with this Order shall be in the English language.

#### **43. GOVERNING LAW AND JURISDICTION**

- 43.1. This Order shall be governed by and construed in accordance with:
  - a. (where CW is or includes a United States domiciled entity) the laws of the State of New York, exclusive of any choice of law provisions; or
  - b. (where CW does not include a United States domiciled entity) the laws of England and Wales, exclusive of any choice of law provisions.
- 43.2. All disputes arising out of or in connection with this Order, shall be referred to and finally resolved in accordance with the Section entitled DISPUTE RESOLUTION, except that nothing in this Section shall restrict the jurisdiction of any court that would, apart from the provisions of this Section or the Section entitled DISPUTE RESOLUTION, have jurisdiction over a dispute arising out of or in connection with this Order for the purpose of enforcing any right or remedy of either party by means of injunctive relief, specific performance or equivalent remedy which an arbitrator appointed pursuant to the Section entitled DISPUTE RESOLUTION is not empowered to grant.
- 43.3. The parties expressly agree to exclude from the Order the United Nations Convention on Contracts for the International Sale of Products, 1980, and any successor thereto.

#### **44. DISPUTE RESOLUTION**

- 44.1. If any dispute arises in connection with this Order, the parties' respective senior representatives will, within ten (10) days after receipt of a written request from either party to the other, in accordance with these Conditions, meet in a good faith effort to resolve the dispute without recourse to legal proceedings. If the parties fail to reach agreement within thirty (30) days after receipt of the written request, any dispute or difference may be referred for resolution in accordance with the following Sections. All proceedings shall be conducted in the English language.
- 44.2. (Where CW is or includes a United States domiciled entity) Any dispute arising out of or relating to the Order, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but if they cannot so agree, each such party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner, or shareholder. The arbitrator(s) shall permit each of the parties to the Arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in New York, New York. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- 44.3. (Where CW does not include a United States domiciled entity) Any dispute arising out of or relating to the Order, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration as in force at the commencement of the arbitration. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to the Order may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the ICC in accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators, one arbitrator to be named by CW, one arbitrator to be named by the Seller, and the third arbitrator (who shall serve as the chairperson of the tribunal) to be appointed by the two party-appointed arbitrators. If the two party-appointed arbitrators fail to appoint a third within 15 days of the appointment of the second of the two party-appointed arbitrators, then either party may request that the chairperson be appointed by the ICC in accordance with its Rules of Arbitration. The place of arbitration shall be London, England. Any arbitral tribunal constituted pursuant to the Order shall apply the law identified in the Section entitled GOVERNING LAW AND JURISDICTION to all disputes. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that the Order and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- 44.4. Notwithstanding the foregoing, CW may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

THE REMAINDER OF THIS PAGE LEFT BLANK. DEFINITIONS TO FOLLOW ON PAGE 12.

#### 45. INTERPRETATION

- “Affiliate” means, in respect of a Person, another Person that controls the first Person or is controlled by the first Person, or is controlled by the same Person that controls the first Person;
- “Conditions” means the standard terms and conditions of purchase set out in this document;
- “CW” means the Curtiss-Wright Corporation Affiliate identified on the Order or any of its assignees or successors;
- “Order” shall mean a purchase order furnished by CW to Seller by mail, electronically, facsimile or by such other means as the parties hereto may establish, including any specifications, and other drawings and documents that are expressly incorporated into it, and incorporating these Conditions;
- “Person” means individual, partnership, limited partnership, sole proprietorship, company, or corporation with or without share capital, public, or private association, public utility, legal personal representative, regulatory or governmental agency or body, or other legal entity however designated or constituted;
- “Supplier” means a person, business, or entity that provides Products and Services to another entity;
- “Products” means all goods, software, articles, documents or other materials, and any data or other information which are stated in the Order to be supplied by Seller to CW;
- “Services” means any services which are stated in the Order to be supplied by Seller to CW;
- “Seller” Shall mean the Supplier of Goods and/or Services.
- a. For the purposes of these Conditions (and, in particular, the definition of “Affiliate” in paragraph A), a Person shall be deemed to control another Person where the first Person has any direct or indirect influence that, if exercised, would give the first Person the power to manage the affairs of the second Person, including (but without limiting the generality of the foregoing) ownership of more than half of the capital or business assets or the right to exercise more than half of the voting rights or the power to appoint more than half of the members of the board of directors or supervisory board of the second Person.
  - b. Any reference in any agreement, order, acknowledgement or other communication between CW and the Seller to CW’s standard terms and conditions shall be deemed to be a reference to these Conditions.
  - c. The term “and/or” denotes a reference to both of the adjoining terms and of them individually.
  - d. Any reference the term “writing,” or cognate expressions, includes communications effected by e-mail.
  - e. Headings and captions set forth in these Conditions are for convenience of reference only and are not intended to, nor do they, alter the meaning, content, or enforceability of any provision hereof.