

## GENERAL TERMS & CONDITIONS OF PURCHASE

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Revision Records			
Rev	Description	Date	Prepared by
N/C	New Document	12/23/2013	D. Waugh
A	Update section 1 to include scope of this document. Revise section 21.4	01/29/2014	S. Fall
B	Update definition table to include NRE. Update section 8.1.1 supplier delivery performance rating. Revise section 12.3 to include claim for NRE. Revise insurance dollar value in section 27.1 and update warranty period in section 36.1	03/07/2014	S. Fall
C	Section 8.3 change repair to rework	07/03/2014	S. Fall
D	Add requirements for supplier to notify EnCore of Change in section 10.2 and disposition of nonconforming products in section 8.7.	05/22/2015	S. Fall
E	Add Section 8.9 FOD Prevention Program. Revise section 10.2 to add work transfer notification and Top Management. Replace Buyer with EnCore on section 8.1.1, 27.1, 36.0, 37.0, 38.0 and 39.0. Changes are in green italics.	03/08/2016	J. Delgado
F	Add section 8.10 to meet AS9100 rev D	05/31/2017	S. Fall
G	Revise Sections 21.2, 21.3, 21.4 and add section 21.7 per Boeing Contract Amendment.	08/24/2017	J. Villegas
H	This document replaces EC-SM110. Updated company name throughout this document from Encore Composite Structures to Applied Composite Structures. Revised section 10.2 regarding notification of change/work transfer.	05/11/2018	T. Crismundo
J	This document replaces ACS-SM110. Updated company logo and name from Applied Composite Structures to Applied Composites throughout document. Revised 10.2 to include Top Management and fix formatting.	05/29/2019	D. Beaulieu
K	<i>Updated sections 8.2.1, 8.6, 10.0 and 18.0 per the latest changes from Boeing form X31764 dated January 1, 2021.</i>	<i>4/06/2021</i>	<i>D.Beaulieu</i>

	<i>Revised section 21.2 GOVERNMENT REQUIREMENTS for the latest Cybersecurity requirements.</i>		
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## 1.0 SCOPE AND DEFINITIONS

### 1.1 SCOPE

This document describes general terms and conditions of purchase which are applicable to Orders placed by Applied Composites Brea ("AC").

### 1.2 DEFINITIONS

The definitions set forth below shall apply to these Terms, any Order, and any related Agreement ("LTA") (collectively "the Agreement"). Words importing the singular shall also include the plural and vice versa.

- A. "Customer" means any owner, lessee or operator of an aircraft or commodity, or designee of such owner, lessee or operator.
- B. "FAA" means the United States Federal Aviation Administration or any successor agency thereto.
- C. "FAR" means the Federal Acquisition Regulations in effect on the date of these terms or any related Agreement(s).
- D. "Procurement Representative" means the individual designated by AC as being primarily responsible for interacting with Seller regarding these terms or any Order.
- E. "Order" means each purchase contract and purchase order issued by AC and either accepted by Seller under the terms of these Terms or issued within AC's authority under these Terms.
- F. "Product" means goods, including components and parts thereof, services, documents, data, software, software documentation and other information or items furnished or to be furnished to AC under any Order, including Tooling, except for rotating use tooling.
- G. "Services" means the work to be performed by Seller under an Order for AC as set forth in the statement of work and specifications established in the applicable LTA.
- H. "Tooling" means all tooling, used in production or inspection of Products or Services, either provided to Seller or supplied by Seller whereby AC agrees to pay Seller for the manufacture of the tooling.
- I. "LTA" means Long Term Agreement means a contract to perform work over an extended period of time instead of purchase order to purchase order contracts and may contain more specific actions required to fulfill a particular procurement.
- J. "Incoterm". The Incoterms rules or International Commercial Terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) that are widely used in International commercial transactions or procurement processes. A series of three-letter trade terms related to common contractual sales practices, the Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods.
- K. "NRE" means None Recurring Expenses

## 2.0 ORDERING

### 2.1 ISSUANCE OF ORDERS

AC may issue Orders to Seller from time to time. Each Order shall contain a description of the Products or Services ordered; a reference to the applicable specifications, drawings or supplier part number; the quantities and prices; the delivery schedule; the terms and place of delivery; and any special conditions. Each Order shall be governed by and be deemed to include the provisions of these Terms and any applicable Agreement. Purchase Order Terms and Conditions.

Any other Order terms and conditions, which conflict with these terms, do not apply unless specifically agreed to in writing by the Parties.

## **2.2 ACCEPTANCE OF ORDERS**

Each Order is AC's offer to Seller and acceptance is strictly limited to its terms. Unless specifically agreed to in writing by the Procurement Representative of AC, AC objects to, and is not bound by, any terms or condition that differs from or adds to the Order. Seller's commencement of performance or acceptance of the Order in any manner shall conclusively evidence Seller's acceptance of the Order as written. AC may revoke any Order prior to AC's receipt of Seller's written acceptance or Seller's commencement of performance, whichever occurs first. Any rejection by Seller of an Order shall specify the reasons for rejection and any changes or additions that would make the Order acceptable to Seller; provided, however, that Seller may not reject any Order for reasons inconsistent with the provisions of these terms or the applicable LTA.

## **2.3 WRITTEN AUTHORIZATION TO PROCEED**

AC's Procurement Representative may give written or electronic authorization to Seller to commence performance before AC issues an Order. If AC's authorization specifies that an Order will be issued, AC and Seller shall proceed as if an Order had been issued. These terms, the applicable LTA and the terms stated in the authorization shall be deemed to be a part of AC's offer and the Parties shall promptly and in good faith agree on any open Order terms. If AC does not specify in its authorization that an Order shall be issued, AC's obligation is strictly limited to the terms of the authorization. If Seller commences performance before an Order is issued or without receiving AC's prior authorization to proceed, such performance shall be at Seller's risk and expense.

## **3.0 TITLE AND RISK OF LOSS**

Except as otherwise agreed to by the Parties, title to and risk of any loss of or damage to the Products shall pass at the F.O.B. or Incoterm point as specified in the applicable Order, except for loss or damage thereto resulting from Seller's fault or negligence.

## **4.0 DELIVERY**

### **4.1 SCHEDULE**

Seller shall strictly adhere to the shipment, delivery or completion schedules specified in the Order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify AC in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; and (ii) provide AC with a written recovery schedule. If AC requests, Seller shall, at Seller's expense, ship via air or other expedited routing to avoid the delay or minimize it as much as possible. Seller shall not deliver Products or Services prior to the scheduled delivery dates unless authorized by AC. AC shall, at no additional cost to AC, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within forty-five (45) days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse AC for reasonable costs associated with storage and return of excess.

If Products or Services are manufactured with reference to AC Proprietary Information or Materials (as defined in Section 20.0), Seller agrees that pursuant to the Proprietary Information and Items per Section 20.0 of these terms, it will not sell or offer such Products or Services for sale to anyone other than AC without AC's prior written consent.

### **4.2 PENALTIES - LATE SHIPMENTS**

Seller guarantees that all goods and services to be delivered hereunder shall be delivered in accordance with the scheduled delivery date set forth in this Order. Except for delay caused by AC, where the delivery date is not met, AC reserves the right to receive credit to Seller's account an amount equal to the product of the applicable percentage specified below and the total cost of the goods or services so delinquent:

1-15 days late, 5%; 16-22 days late, 10%; 23-30+ days late, 20%.



The parties expressly agree that the foregoing credit is for late delivery only and is cumulative with, and does not exclude, any other right or remedy AC may have, at law or in equity, for breach of any term of this Order.

#### **4.3 NOTICE OF LABOR NEGOTIATIONS**

When requested by AC, Seller will provide status on labor contracts and pending negotiations, including that of Seller's subcontractors or suppliers, except as may be prohibited by law.

### **5.0 ON-SITE REVIEW AND RESIDENT REPRESENTATIVES**

#### **5.1 REVIEW**

Seller hereby grants and shall cause any of its subcontractors or suppliers to grant, to AC the right to visit the facility of Seller or any of its subcontractors or suppliers during operating hours to review progress and performance with respect to production, schedule, cost, quality and protection of AC's proprietary rights under any Order. Any AC representative shall be allowed access to all areas used for the performance of the Agreement. Such access shall be subject to the regulations of any governmental agency regarding admissibility and movement of personnel on the premises of Seller or any of its subcontractors or suppliers. AC shall notify Seller prior to any visit. Such notice shall contain the names, citizenship and positions of the visiting personnel and the duration and purpose of such visit.

#### **5.2 RESIDENT REPRESENTATIVES**

AC may, in its sole discretion, and for such period, as it deems necessary, locate resident personnel ("Resident Team") at Seller's facility. The Resident Team shall function under the direction of a resident AC manager, if appropriate, or a manager located at AC who will supervise Resident Team activities. The Resident Team shall be allowed access to or to review, as the case may be, all work areas, program status reports and management reviews used for or relating to Seller's performance of the Agreement. Seller shall supply the Resident Team with office space, desks, facsimile machines, telephones, high-speed access to internet services (if available from local providers), stationery supplies, filing cabinets, communication facilities, secretarial services and any other items reasonably requested by AC. A reasonable portion of the Resident Team's working area shall be dedicated to space for private telephone calls, meetings and similar AC activities. All costs and expenses for such facilities and services, if required, shall be paid by Seller. Notwithstanding such assistance, access and review, Seller remains solely responsible for performing in accordance with each Order.

### **6.0 CREDIT OFFICE VISIBILITY**

#### **6.1 SELLER INFORMATION**

If requested, Seller shall provide financial data, on a quarterly basis, or as requested to the AC Corporate Credit Office for credit and financial condition reviews. Said data shall include but not be limited to balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by AC's Corporate Credit Office. AC shall treat all such information as confidential.

#### **6.2 SUBCONTRACTOR/SUPPLIER INFORMATION**

Seller shall maintain a process to evaluate and assess on an on-going basis the financial health of its subcontractor(s) and supplier(s) supporting these terms. AC Corporate Credit reserves to right to review and evaluate Seller's process. Seller will include provisions as part of its subcontracts that allow information to be shared with AC Corporate Credit and allow AC Corporate Credit to evaluate and assess the financial health of such subcontractors and suppliers directly. In addition, Seller shall ensure that AC may disclose to Seller any financial information received by AC Corporate Credit as part of this Section 6.2. No action by AC Corporate Credit shall relieve Seller from its responsibilities under this Section 6.0 or any other obligation under these terms.

## **7.0 PACKING AND SHIPPING**

### **7.1 GENERAL**

Seller shall pack the Products in accordance with AC requirements set forth on the purchase. Unless otherwise specified in the Order, Products or Services sold place of origin or shipment shall be forwarded collect. For Products shipped domestically, Seller shall make no declaration concerning the value of the Products or Services shipped, except on the Products or Services where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. AC may charge Seller for damage to or deterioration of any Products resulting from improper packing or packaging. Seller shall comply with any special instructions stated in the applicable Order. Upon AC's request, Seller will identify packaging charges showing material and labor costs for container fabrication.

#### **7.1.1 SHIPPING DOCUMENTATION**

Shipments by Seller or its subcontractors or suppliers must include packing sheets. Each packing sheet must include at a minimum the following: a) Seller's name, address, phone number; and supplier code number b) Order and item number; c) ship date for the Products; d) total quantity shipped and quantity in each container, if applicable; e) legible packing slip number; f) nomenclature; g) unit of measure; h) "ship to" information if other than AC; i) warranty data and certification, as applicable; j) rejection tag, if applicable; k) Seller's certification that Products or Services comply with Order requirements; and, l) identification of optional material used, if applicable. A shipment containing hazardous and non-hazardous materials must have separate packing sheets for the hazardous and non-hazardous materials. Items shipped on the same day will be consolidated on one bill of lading or air bill, unless AC's Procurement Representative authorizes otherwise. The shipping documents will describe the material according to the applicable classification or tariff rating. The total number of shipping containers will be referenced on all shipping documents. Originals of all government bills of lading will be surrendered to the origin carrier at the time of shipment.

#### **7.1.2 INSURANCE**

Seller will not insure any shipment designated origin, place of shipment, or applicable Incoterm where AC is responsible for transportation unless authorized by AC.

#### **7.1.3 SHIPPING CONTAINER LABELS**

Seller will label each shipping container with the Order number and the number that each container represents of the total number being shipped (e.g., Box 1 of 2, Box 2 of 2).

#### **7.1.4 CARRIER SELECTION**

AC will select the carrier and mode of transportation for all shipments where freight costs will be charged to AC.

#### **7.1.5 INVOICES**

Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or shipping log/manifest), if any, with its invoices.

#### **7.1.6 NONCOMPLIANCE**

If Seller is unable to comply with the shipping instructions in an Order, Seller will contact AC's Supply Chain Logistics organization or AC's Procurement Representative.

#### **7.1.7 RESERVED**

### **7.2 BARCODE MARKING AND SHIPPING**

For Orders from AC locations that have approved Seller to utilize barcode labeling for shipping and packaging, Seller shall mark and package such shipments in accordance with the applicable barcode requirements for that location.

Where approved and pursuant to applicable specifications, Seller will utilize bar-coding technology for part marking Products.

## **8.0 QUALITY ASSURANCE, INSPECTION, REJECTION, & ACCEPTANCE**

### **8.1 CONTROLLING DOCUMENT**

The controlling quality assurance document AC-SM210 for Orders shall be as set forth in purchase orders or as prescribed in any LTA.

#### **8.1.1 SUPPLIER PERFORMANCE METRICS**

Suppliers are expected to ship products which are 100% on-time to the requirements of any Order, and at a Quality Acceptance level of 100%.

If Seller's performance rating, including but not limited to, Quality, Delivery and/or Purchase Order Conformance, falls below 98.5% on-time delivery and 99.5% quality, Seller shall perform a root cause analysis and if requested, provide AC with a corrective action plan outlining the tasks necessary to ensure timely and complete resolution of any problems. If Seller's corrective action plan does not fully eliminate the problem, then AC reserves the right to impose any costs resulting from such failure, including, but not limited to, source inspection at Seller's expense.

### **8.2 SELLER'S INSPECTION**

Seller shall inspect or otherwise verify that all Products or Services, including those components procured from or furnished by subcontractors or suppliers or AC, comply with the requirements of the Order prior to shipment to AC or Customer. Seller shall be responsible for all tests and inspections of the Product during receiving, manufacture and Seller's final inspection. Seller agrees to furnish copies of test and/or control data upon request from AC's Procurement Representative.

#### **8.2.1 SELLER'S DISCLOSURE**

Seller shall provide written notification to AC within *three (3)* days when a nonconformance is determined to exist, or is suspected to exist, on Product already delivered to AC under any Order. When the following is known, written notification shall include:

- A. Affected process or Product number and name
- B. Description of the *nonconforming condition and the affected engineering requirement* (i.e., what it is and what it should be);
- C. Quantity, *shipping* dates, *purchase orders* and destination of shipment delivered
- D. Suspect/affected serial number(s) or date codes, *lot numbers, or other part identifiers and airplane line units* when applicable.

*If the investigation to obtain all required information is not completed within 3 days from the day of discovery, supplier is still required to complete information in section A and B and any known information elements listed in C and D to AC by submitting a Preliminary disclosure (notice of escape) until the full report is complete.*

The Seller shall notify the AC Procurement Representative and the AC Supplier Quality Field Representative.

If the nonconforming condition has been previously identified by AC, using a Nonconformance *report* or other equivalent means and requesting a corrective action response, the Seller shall notify the AC investigator identified on the *report that additional parts are affected (same part number(s)/same condition)*.

**8.2.2 SELLER'S ACCEPTANCE**

Seller shall provide with all shipments the following evidence of acceptance by its quality assurance department: (a) certified physical and metallurgical or mechanical test reports where required by controlling specifications, or (b) a signed, dated statement on the packing sheet certifying that its quality assurance department has inspected the Products or Services and they adhere to all applicable drawings and/or specifications.

**8.3 AC INSPECTION AND REJECTION**

AC will accept the Products or Services or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, 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 obligations under any Order or impair any right or remedy of AC. If Seller delivers non-conforming Products or Services, AC may at its option and at Seller's expense (i) return the Products for credit or refund; (ii) require Seller to promptly correct or replace the Products or Services; (iii) correct the Products or Services; or, (iv) obtain replacement Products or Services from another source. These remedies are in addition to any remedies AC may have at law or equity. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Rework, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Procurement Representatives of AC may reasonably direct. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against amounts that may be owed to Seller under these terms or otherwise. Acceptance of any Product by AC following any repair or rework pursuant to this Section 8.3 shall not alter or affect the obligations of Seller or the rights of AC under the Agreement.

AC reserves the right to charge Seller a **six** hundred and fifty (**\$650**) dollar penalty for each Non-Conformance Report (NCR) written by AC against Seller's goods and services supplied hereunder.

**8.4 RIGHTS OF AC CUSTOMERS AND REGULATORS TO PERFORM INSPECTIONS, SURVEILLANCE, AND TESTING**

AC'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 AC that are departments, agencies or instrumentalities of the United States Government and to the FAA and any successor agency or instrumentality of the United States Government. AC may also, at AC's option, by prior written notice from AC's Procurement Representative, extend such rights to other Customers of AC and to agencies or instrumentalities of other governments equivalent in purpose to the FAA. Seller shall cooperate with any such United States Government or AC directed inspection, surveillance, test or review without additional charge to AC. Nothing in these terms shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation. Where Seller is located in or subcontracts with a supplier or subcontractor located in a country which does not have a bilateral airworthiness agreement with the United States, Seller will obtain and maintain on file and require its affected supplier(s) or subcontractor(s) to obtain and maintain on file, subject to review by AC, or copies provided to AC upon request, a letter from the applicable government where the Product or subcontracted element is to be manufactured stating that AC and the FAA will be granted access 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.

**8.5 RETENTION OF RECORDS**

For Orders supporting commercial airlines, Seller shall maintain, on file at Seller's facility, Quality records traceable to the conformance of product/part numbers delivered to AC. Seller shall make such records available to regulatory authorities and AC's authorized representatives. Seller shall retain such records for a period of not less than (10) ten years from the date of shipment under each applicable Order for all product/part numbers unless otherwise specified on the Order. Seller shall maintain all records related to the current first article inspection (FAI) for (10) ten years past final delivery of the last Product covered by the FAI. At the expiration of such period set forth above and prior to any disposal of records, Seller will notify AC of records to be disposed of and AC reserves the right to request delivery of

such records. In the event AC chooses to exercise this right, Seller shall promptly deliver such records to AC at no additional cost on media agreed to by both parties.

## **8.6 INSPECTION**

At no additional cost to AC, Products or Services or portions thereof, may be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' or suppliers' locations. AC will perform inspections, surveillance and tests so as not to unduly interfere with Seller's performance under an Order or the Agreement. Seller shall maintain an inspection system acceptable to AC for the Products or Services purchased under any Order. If AC performs an inspection or test on the premises of Seller or its subcontractors or suppliers, Seller shall furnish and require its subcontractors or suppliers to furnish, without additional charge, reasonable facilities, and assistance for the safe and convenient performance of these duties. Seller's documentation accompanying the shipment containing inspected Products or Services, or portions thereof must reflect evidence of this inspection.

### **8.6.1 OPERATOR SELF-VERIFICATION PROGRAM**

*If Seller uses an Operator Self-Verification (OSV) program, Seller shall comply with the requirements set forth in SAE industry standard AS9162, "Aerospace Operator Self Verification Programs", as may be amended from time to time.*

*Buyer reserves the right to conduct surveillance at Seller's facility to determine that Seller is compliant to the requirements of AS9162.*

## **8.7 AC DISPOSITION OF NONCONFORMING PRODUCTS**

When supplier is manufacturing products per AC design, the dispositions of use-as-is or repair shall only be used by the supplier after approval by AC unless written MRB authorization is granted.

Supplier shall not use dispositions of use-as-is or repair, unless specifically authorized by the AC if the nonconformity results in a departure from the contract requirements.

## **8.8 REGULATORY APPROVALS**

For aircraft regulated by the FAA or non-U.S. equivalent agency, regulatory approval may be required for Seller to make direct sales (does not include "direct ship" sale through AC) of modification or replacement parts to owners/operators of type certificated aircraft. Unless explicit direction is given to the contrary, no articles (or constituent parts thereof) ordered by AC shall contain any FAA-PMA markings and shall not be certified under an FAA PMA approval. Regulatory approval, such as Parts Manufacturer Approval (PMA), is granted by the FAA or appropriate non-U.S. equivalent regulatory agency. Seller agrees not to engage in any such direct sales of Products or Services under these terms without regulatory approval. Any breach of this provision will be deemed a material breach of these terms. For Seller proprietary parts, Seller agrees to notify AC of application for PMA or other applicable regulatory approval and subsequent approval or denial of same. Upon receipt of proof of PMA or other applicable regulatory approval, AC may list Seller in the illustrated parts catalog as seller of that part.

## **8.9 FOD PREVENTION PROGRAM**

*Seller is required to establish and maintain a FOD prevention program in compliance with AS/EN/SJAC 9146 Foreign Object Damage (FOD) Prevention Program -- Requirements for Aviation, Space, and Defense Organizations.*

*Aerospace standards such as AS9146 can be obtained from SAE International at <http://standards.sae.org>.*

## **8.10 SUPPLIER CONTROL**

Seller shall:

- Apply appropriate controls to their direct and sub-tier suppliers to ensure that requirements are met.
- Use customer-designated or approved external providers, including process sources (e.g., special processes) when required by purchase order or supplier contract;



- Have a process in place to prevent the use of counterfeit parts;
- flow down to its suppliers any applicable requirements including AC requirements;
- provide, when required, test specimens for design approval, inspection/verification, investigation, or auditing;
- ensure its employees are aware of:
  - their contribution to product or service conformity;
  - their contribution to product safety;
  - the importance of ethical behavior.

## **9.0 EXAMINATION OF RECORDS**

Seller shall maintain complete and accurate records showing the sales volume of all Products or Services. Such records shall support all services performed, allowances claimed, and costs incurred by Seller in the performance of each Order, including but not limited to those factors which comprise or affect direct labor hours, direct labor rates, material costs, burden rates and subcontracts. Such records and other data shall be capable of verification through audit and analysis by AC and be available to AC at Seller's facility for AC's examination, reproduction, and audit at all reasonable times from the date of the applicable Order until three (3) years after final payment under such Order. Seller shall provide assistance to interpret such data if requested by AC. Such examination shall provide AC with complete information regarding Seller's performance for use in price negotiations with Seller relating to existing or future orders for Products or Services, including but not limited to negotiation of equitable adjustments for changes and termination/obsolescence claims pursuant to Section 10.0 and Section 12.0 herein. AC shall treat all information disclosed under this Section as confidential, except as otherwise required by U.S. Government contracting regulation(s).

## **10.0 CHANGES**

### **10.1 CHANGES CLAUSE**

AC's Procurement Representative may, without notice to sureties, in writing direct changes within the general scope of these terms or an Order in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of AC-furnished property; and, if these terms includes services, (vi) description of services to be performed; (vii) time of performance (i.e., hours of the day, days of the week, etc.); and (viii) place of performance. Seller shall comply immediately with such direction. If such change increases or decreases the cost or time required to perform under these terms, AC and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to AC's Procurement Representative in writing within thirty (30) days and deliver a fully supported proposal to AC's Procurement Representative within sixty (60) days after Seller's receipt of such direction. AC shall modify the Order in writing accordingly. AC may, at its sole discretion, consider any claim regardless of when asserted. If Seller's claim includes the cost of property made obsolete or excess by the change, AC may direct the disposition of the property. AC may examine Seller's pertinent books and records supporting Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with AC's direction. If Seller considers that AC's conduct constitutes a change, Seller shall notify AC's Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from AC's Procurement Representative, Seller shall take no action to implement any such change.

AC has the right to make changes to delivery schedule within a ninety (90) days period or not less than seller's stated lead time without any financial impact.

### **10.2 NOTIFICATION OF CHANGE/ WORK TRANSFER**

- a. Supplier will make no changes in the design, materials, manufacturing location, manufacturing equipment, production processes, changes between a manual and automated process, or any other process related to the Goods, without the advance written approval of AC's Authorized Representative. This requirement applies whether or not the change affects costs and regardless of the type of change, including product improvements.
- b. Supplier shall promptly notify AC when changing Top Level Management.
- c. To request approval to change a manufacturing location or subcontracting of process required to manufacture the Goods, Supplier must provide AC with a plan at least 180 days prior to the proposed start date of implementing such change in the manufacturing location or subcontracting of processes required for the Goods. Any such plan is subject to AC's written approval, and shall not result in a price increase charged by Supplier to AC for Goods, and must demonstrate that Supplier has taken all necessary actions to avoid negative impacts to AC, including, but not limited to, maintaining additional inventory, overlapping production schedules, etc. Any price changes will be agreed to by Seller and AC prior to implementation.
- d. Supplier will notify AC of any potential changes to the program, Goods, or schedule promptly as it becomes aware of them.
- e. Supplier will be responsible for any and all of AC's costs incurred as a result of changes implemented by Supplier including but not limited to all customer charges; all labor costs, including engineering costs, travel and lodging; all costs to transition to an alternative source of supply; redesign and/or recertification; and all corrective action costs (e.g., costs of additional inspection or quality-control systems).
- f. Supplier will not deliver, ship, or substitute Goods that have had a process change in its manufacture until all required technical documentation and change approvals have been received from AC.
- g. Supplier will flow down this requirement in all its subcontracts and purchase orders for purchased goods or process-related services required for the Goods, whether such Goods are supplied to Supplier as an end item, a component part of an end item, or an individual piece part.

### **10.3 MANUFACTURING PLANNING (PLANNING CHANGES)**

*"Controlled" or "Approved" planning requirements are derived from the part specific Engineering requirements. Planning changes to "controlled" or "approved" planning requires compliance with the associated process prior to implementing proposed changes within seller's production system and commencing manufacture. Seller shall submit manufacturing planning changes to AC or end customer in accordance with the requirements described within the associated process for approval/re-approval.*

*For Boeing programs, engineering qualification/approvals include material & process approvals and quality engineering approvals (but not limited to):*

*Manufacturing plans (e.g. D6-1276, D6-17781, BSS7085)*

*Part Qualifications (e.g. BSS7029, BSS7082, BSS7119)*

*Process Control (e.g. D6-36232)*

*Boeing Level 3 Approvals (e.g. BAC5980)*

*Statistical Sampling Plans (e.g. BSS7286).*

## **11.0 GENERAL & INTERNATIONAL REQUIREMENTS**

### **11.1 LANGUAGE**

The Parties hereto have agreed that these terms be written in American English only. All contractual documents and all correspondence, invoices, notices and other documents shall be submitted in American English. Any necessary conversations shall be held in English. AC shall determine whether measurements will be in the English or Metric system or a combination of the two systems. When furnishing documents to AC, Seller shall not convert measurements, which AC has stated in an English measurement system into the Metric system.

### **11.2 CURRENCY**

Unless specified elsewhere herein, all prices shall be stated in and all payments shall be made in the currency of the United States of America (U.S. Dollars). No adjustments to any prices shall be made for changes to or fluctuations in currency exchange rates.

### **11.3 IMPORT/EXPORT**

- A. In performing the obligations of under these terms, both Parties will comply with all applicable export, import and sanctions laws, regulations, orders, and authorizations, as they may be amended from time to time, applicable to the export (including re-export) or import of goods, software, technology, or technical data ("Items") or services, including without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control (collectively, "Export/Import Laws").
- B. The Party conducting the export or import shall obtain all export or import authorizations which are required under the Export/Import Laws for said party to execute their obligations under these terms.
- C. Each Party shall reasonably cooperate and exercise reasonable efforts at its own expense to support the other Party in obtaining any necessary licenses or authorizations required to perform its obligations under these terms. Reasonable cooperation shall include providing reasonably necessary documentation, including import, end user and retransfer certificates.
- D. The Party providing Items or services under these terms shall, upon request, notify the other Party of the Items or services' export classification (e.g. the Export Control Classification Numbers or U.S. Munitions List (USML) category and subcategory) as well as the export classification of any components or parts thereof if they are different from the export classification of the Item at issue. The Parties acknowledge that this representation means that an official capable of binding the Party providing such Items or services knows or has otherwise determined the proper export classification.
- E. Each Party agrees to reasonably cooperate with the other in providing, upon request of the other Party, documentation or other information that supports or confirms this representation.

## **12.0 TERMINATION FOR CONVENIENCE**

### **12.1 BASIS FOR TERMINATION; NOTICE**

AC may, from time to time terminate all or part of any Order issued hereunder, by written notice to Seller. Any such written notice of termination shall specify the effective date and the extent of any such termination.

### **12.2 TERMINATION INSTRUCTIONS**

On receipt of a written notice of termination of all or part of any Order under these terms, unless otherwise directed by AC, Seller shall:

- A. Immediately stop work as specified in the notice;



- B. Incur no further contractual obligations for materials, services or facilities, except as necessary to complete any continued portion of these terms or any Order issued hereunder.
- C. Immediately terminate its subcontracts and purchase orders relating to work terminated;
- D. Assign to AC, if directed by AC, all right, title, and interest of Seller under its subcontracts terminated, in which case AC shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- E. Settle any termination claims made by its subcontractors or suppliers; provided, that AC shall have approved the amount of such termination claims in writing prior to such settlement;
- F. Preserve and protect all terminated inventory and Products in which AC has or may acquire an interest;
- G. At AC's request, transfer title (to the extent not previously transferred) and deliver to AC or AC's designee all supplies and materials, work-in-process, Tooling and manufacturing drawings and data produced or acquired by Seller for the performance of these terms and any Order, all in accordance with the terms of such request;
- H. Be compensated for such items to the extent provided in Section 12.3 below;
- I. Take all reasonable steps required to return, or at AC's option and with prior written approval to destroy, all AC Proprietary Information and Items, as set forth in Section 20.0, in the possession, custody or control of Seller or any of its subcontractors or suppliers;
- J. Take such other action as, in AC's reasonable opinion, may be necessary, and as AC shall direct in writing, to facilitate termination of the Order; and
- K. Complete performance of the work not terminated in which AC has or may acquire an interest.

### **12.3 SELLER'S CLAIM**

If AC terminates an Order in whole or in part under these terms, Seller shall have the right to submit a written termination claim to AC in accordance with the terms of Section 12.3. Such termination claim shall be asserted to AC within forty-five (45) days and all documentation supporting said claim must be asserted not later than six (6) months after Seller's receipt of the termination notice and shall be in the form prescribed by AC. Such claim must contain sufficient detail describing the amount claimed, including detailed inventory schedules, a detailed breakdown of all costs claimed separated into categories (e.g., materials, purchased parts, finished components, labor, burden, general and administrative, excluding profit and non-contracted NRE), and documentation supporting the claim reasonably requested by AC, including without limitation, invoices, proof of payment, etc., and an explanation underlying the basis for allocation of any other costs. In no event shall claims for non-recurring engineering be considered or paid by AC to Seller. With regard to the amount compensable to Seller under a termination of all or part of an Order under these terms, Seller shall be entitled to compensation in accordance with and to the extent allowed under the terms of FAR 52-249-2 paragraphs (e)-(i), (Sept 96) (as published in 48 CFR § 52.249-2 approval 1996; without alternates, unless alternate clause date is specified on the Order) which is incorporated herein by reference except "Government" and Contracting Officer" shall mean AC, "Contractor" shall mean Seller and "Contract" shall mean Order. Seller shall indemnify AC and hold AC harmless from and against (i) any and all claims, suits and proceedings against AC by any subcontractor or supplier of Seller in respect of any such termination and (ii) any and all costs, expenses, losses and damages incurred by AC in connection with any such claim, suit or proceeding.

### **12.4 FAILURE TO SUBMIT A CLAIM**

Notwithstanding any other provision of this Section 12.0, if Seller fails to submit a termination claim within the time period set forth above, Seller shall be barred from submitting a claim and AC shall have no obligation for payment to Seller under this Section 12.0 except for those Products or Services previously delivered and accepted by AC.

**12.5 PARTIAL TERMINATION**

Any partial termination of an Order shall not alter or affect the terms and conditions of the Order or any Order with respect to Products or Services not terminated.

**12.6 PRODUCT PRICE**

Termination of all or part of an Order under this Section 12.0 shall not result in any change to Prices (as defined in the applicable LTA) for Products or Services not terminated.

**12.7 EXCLUSIONS OR DEDUCTIONS**

The following items shall be excluded or deducted from any claim submitted by Seller:

- A. All unliquidated advances or other payments made by AC to Seller pursuant to a terminated Order, or part thereof;
- B. Any claim which AC has against Seller;
- C. The agreed price for scrap allowance; and,
- D. Except for normal spoilage and any risk of loss assumed by AC, the agreed fair value of property that is lost, destroyed, stolen or damaged.

**12.8 PARTIAL PAYMENT/PAYMENT**

Payment, if any, to be paid under this Section 12.0 shall be made thirty (30) days after settlement between the Parties or as otherwise agreed to between the Parties. AC may make partial payments and payments against costs incurred by Seller for the terminated portion of the Order. If the total payments exceed the final amount determined to be due, Seller shall repay the excess to AC upon demand.

**12.9 SELLER'S ACCOUNTING PRACTICES**

AC and Seller agree that Seller's "normal accounting practices" used in developing the price of the Product(s) shall also be used in determining the allocable costs at termination of all or part of an Order. For purposes of this Section 12.9, Seller's "normal accounting practices" refers to Seller's method of charging costs as either a direct charge, overhead expense, general administrative expense, etc.

**12.10 RECORDS**

Unless otherwise provided in these terms or by law, Seller shall maintain all financial records and documents relating to the terminated portion of the Order for three (3) years after final settlement of Seller's termination claim.

**13.0 CANCELLATION FOR DEFAULT****13.1 EVENTS OF DEFAULT**

The occurrence of any one or more of the following events shall constitute an "Event of Default".

- A. Any failure by Seller to deliver, when and as required by these terms or any Order, any Product, except as provided in Section 14.0; or
- B. Any failure by Seller to provide an acceptable Assurance of Performance within the time specified in Section 17.0, or otherwise in accordance with applicable law; or,
- C. Any failure by Seller to perform or comply with any obligation set forth in Section 20.0; or,
- D. Seller is or has participated in the sale, purchase, or manufacture of airplane parts without the required approval of the FAA or appropriate non-U.S. equivalent regulatory agency; or

- E. AC revokes Seller's Quality Assurance System approval, if applicable; or, F. Any failure by Seller to perform or comply with any obligation (other than as described in the foregoing Sections (13.1.A, 13.1.B, 13.1.C, 13.1.D and 13.1.E) set forth in these terms and such failure shall continue unremedied for a period of ten (10) days or more following receipt by Seller of notice from AC specifying such failure; or
- F. (1) the suspension, dissolution or winding-up of Seller's business, (2) Seller's insolvency, or its inability to pay debts, or its nonpayment of debts, as they become due, (3) the institution of reorganization, liquidation or other such proceedings by or against Seller or the appointment of a custodian, trustee, receiver or similar person for Seller's properties or business, (4) an assignment by Seller for the benefit of its creditors, or (5) any action of Seller for the purpose of effecting or facilitating any of the foregoing.

### **13.2 REMEDIES**

If any Event of Default shall occur:

A. Cancellation

AC may, by giving written notice to Seller, immediately cancel all or portion of any Order, any LTA or these terms, in whole or in part, and AC shall not be required after such notice to accept the tender by Seller of any Products or Services subject to the cancellation.

B. Cover

AC may manufacture, produce or provide, or may engage any other entity to manufacture, produce or provide, any Products or Services in substitution for the Products or Services to be delivered or provided by Seller. In addition to any other remedies or damages available to AC hereunder or at law or in equity, AC may recover from Seller the difference between the price for each such Product and the aggregate expense, including, without limitation, administrative and other indirect costs, paid or incurred by AC to manufacture, produce or provide, or engage other persons to manufacture, produce or provide, each such Product.

C. Re-schedule

Re-schedule Seller's performance of any or all of the Services or Additional Services.

D. Rework or Repair

Where allowed by the applicable regulatory authority, AC or its designee may rework or repair any Product in accordance with GTA Section 8.3, or as may otherwise be allowed under the Agreement;

E. Setoff

AC shall, at its option, have the right to set off against and apply to the payment or performance of any obligation, sum or amount owing at any time to AC under these terms or under any Order, all deposits, amounts or balances held by AC for the account of Seller and any amounts owed by AC to Seller, regardless of whether any such deposit, amount, balance or other amount or payment is then due and owing.

F. Tooling and other Materials

As partial compensation for the additional costs which AC will incur as a result of the transfer of production capabilities from Seller to AC or AC's designee, Seller shall upon the request of AC, transfer and deliver to AC or AC's designee title to any or all (1) Tooling, (2) AC-furnished material, (3) raw materials, parts, work-in-process, incomplete or completed assemblies, and all other Products or parts thereof in the possession or under the effective control of Seller or any of its subcontractors or suppliers (4) Proprietary Information and Materials of AC including without limitation planning data, drawings and other Proprietary Information and Materials (as defined in Section 20.0) relating to the design, production, maintenance, repair and use of Tooling, in the possession or under the effective control of Seller or any of its subcontractors or suppliers, in each case free and clear of all liens, claims or other rights of any person. Seller shall be entitled to receive from AC reasonable

compensation for any item accepted by AC which has been transferred to AC pursuant to this Section 13.2. (except for any item the price of which has been paid to Seller prior to such transfer); provided, however, that such compensation shall not be paid directly to Seller but shall be set off against any damages payable by Seller to AC as a result of any Event of Default.

#### G. Remedies Generally

No failure on the part of AC in exercising any right or remedy hereunder, or as provided by law or in equity, shall impair, prejudice or constitute a waiver of any such right or remedy, or shall be construed as a waiver of any Event of Default or as acquiescence therein. No single or partial exercise of any such right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No acceptance of partial payment or performance of any of Seller's obligations hereunder shall constitute a waiver of any Event of Default or a waiver or release of payment or performance in full by Seller of any such obligation. All rights and remedies of AC hereunder and at law and in equity shall be cumulative and not mutually exclusive and the exercise of one shall not be deemed a waiver of the right to exercise any other. Nothing contained in these terms shall be construed to limit any right or remedy of AC now or hereafter existing at law or in equity.

### **14.0 EXCUSABLE DELAY**

If delivery of any Product is delayed by unforeseeable circumstances beyond the control and without the fault or negligence of Seller or of its suppliers or subcontractors (any such delay being hereinafter referred to as "Excusable Delay"), the delivery of such Product shall be extended for a period to be determined AC after an assessment by AC of alternative work methods. Excusable Delays may include, but are not limited to, acts of God, war, terrorist acts, riots, acts of government, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes or unusually severe weather, but shall exclude Seller's noncompliance with any legal requirement as required by Section 21.0 "Compliance with Laws". However, the above notwithstanding, AC expects Seller to continue production, recover lost time and support all schedules as established under these terms or any Order. Therefore, it is understood and agreed that (1) delays of less than two days duration shall not be considered to be Excusable Delays unless such delays shall occur within thirty (30) days preceding the scheduled delivery date of any Product and (2) if delay in delivery of any Product is caused by the failure to perform of any of Seller's subcontractors or suppliers, such delay shall not be considered an Excusable Delay unless the supplies or services to be provided by such subcontractor or supplier are not obtainable from other sources in sufficient time to permit Seller to meet the applicable delivery schedules. If delivery of any Product is delayed by any Excusable Delay for more than three months, AC may, without any additional extension, cancel all or part of any Order with respect to the delayed Products or Services, and exercise any of its remedies in accordance with Section 13.2, or as otherwise provided in these terms provided however, that AC shall not be entitled to monetary damages or specific performance to the extent any Seller's breach is the result of an Excusable Delay.

### **15.0 SUSPENSION OF WORK**

AC may at any time, by written order to Seller, require Seller to stop all or any part of the work called for by any Order for up to one hundred twenty (120) days hereafter referred to as a "Stop Work Order" issued pursuant to this Section 15.0. On receipt of a Stop Work Order, Seller shall promptly comply with its terms and take all reasonable steps to minimize the occurrence of costs arising from the work covered by the Stop Work Order during the period of work stoppage. Within the period covered by the Stop Work Order (including any extension thereof) AC shall either (i) cancel the Stop Work Order or (ii) terminate or cancel the work covered by the Stop Work Order in accordance with the provisions of these terms, including without limitation, Section 12.0 or 13.0. In the event the Stop Work Order is canceled by AC or the period of the Stop Work Order (including any extension thereof) expires, Seller shall promptly resume work in accordance with the terms of the Agreement.

### **16.0 TERMINATION OR WRONGFUL CANCELLATION**

AC shall not be liable for any loss or damage resulting from any termination of all or a portion of an Order under these terms, except as expressly provided in Section 12.3 or any cancellation under Section 13.0 except to the extent that such cancellation shall have been determined to have been wrongful, in which case such wrongful cancellation shall be

deemed a termination of all or a portion of an Order pursuant to Section 12.1 and therefore, AC's liability shall be limited to the payment to Seller of the amount or amounts identified in Section 12.3.

## 17.0 ASSURANCE OF PERFORMANCE

### A. Seller to Provide Assurance

If AC determines, at any time or from time to time, that it is not sufficiently assured of Seller's full, timely and continuing performance hereunder, or if for any other reason AC has reasonable grounds for insecurity, AC may request, by notice to Seller, written assurance (hereafter an "Assurance of Performance") with respect to any specific matters affecting Seller's performance hereunder, that Seller is able to perform all of its respective obligations under any Order when and as specified herein. Each Assurance of Performance shall be delivered by Seller to AC as promptly as possible, but in any event no later than ten (10) calendar days following AC's request therefore and each Assurance of Performance shall be accompanied by any information, reports or other materials, prepared by Seller, as AC may reasonably request. Except as to payment for accepted goods, AC may suspend all or any part of AC's performance hereunder until AC receives an Assurance of Performance from Seller satisfactory in form and substance to AC.

### B. Meetings and Information

AC may request one or more meetings with senior management or other employees of Seller for the purpose of discussing any request by AC for Assurance of Performance or any Assurance of Performance provided by Seller. Seller shall make such persons available to meet with representatives of AC as soon as may be practicable following a request for any such meeting by AC and Seller shall make available to AC any additional information, reports or other materials in connection therewith as AC may reasonably request.

## 18.0 RESPONSIBILITY FOR PROPERTY

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of AC's and Customer's supplied property and all property to which AC has acquired an interest. Seller assumes all risk of loss, deterioration, destruction or damage of such property and lost paperwork, e.g. 8130, etc. while in Seller's or its subcontractors' or suppliers' possession, custody or control. Deterioration does not include items deteriorated due to the lapse of shelf-life or other inherent deterioration. Upon request, Seller shall provide AC with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of an Order without prior written consent from AC. Seller shall promptly notify AC's Procurement Representative if AC's property is lost, damaged, or destroyed. As directed by AC, upon completion, termination or cancellation of any Agreement or all or a portion of any Order, Seller shall deliver such property, to the extent not incorporated in delivered end products, to AC in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Section 18.0 limits Seller's use, in its direct contracts with the government, of property in which the government has an interest.

### 18.1 EXCESS INVENTORY (Applicable to Boeing programs)

*Seller shall control all inventory of Boeing proprietary product that is in excess of contract quantity in order to prevent product from being sold or provided to any third party without prior written authorization from AC and/or Boeing. Additionally, Seller shall not provide Product from excess inventory that was previously rejected or returned by Boeing without prior written authorization from AC and/or Boeing. When Seller fulfills a purchase order and/or a Long Term Agreement (LTA) with Product from excess inventory, for which Seller was the original manufacturer, Seller shall be able to demonstrate traceability to the original AC purchase document that authorized manufacture of the Product when requested by AC and/or Boeing.*

## 19.0 LIMITATION OF SELLER'S RIGHT TO ENCUMBER ASSETS

Seller warrants to AC that it has good title to all inventory, work-in-process, tooling and materials to be supplied by Seller in the performance of its obligations under any Order. Pursuant to the provisions of such Order, Seller will transfer to AC title to such inventory, work-in-process, tooling and materials whether transferred separately or as part of any Product delivered under the Order, free of any liens, charges, encumbrances or rights of others.



## **20.0 PROPRIETARY INFORMATION AND ITEMS**

AC and Seller shall each keep confidential and protect from disclosure all (a) confidential, proprietary, and/or trade secret information; (b) tangible items containing, conveying, or embodying such information; and (c) tooling obtained from and/or belonging to the other in connection with these terms or any Order (collectively referred to as "Proprietary Information and Materials"). AC and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of these terms and/or any Order. Provided, however, that despite any other obligations or restrictions imposed by this Section 20.0, AC shall have the right to use, disclose and copy Seller's Proprietary Information and Materials for the purposes of testing, certification, use, sale, or support of any item delivered under these terms, an Order, or any airplane including such an item; and any such disclosure by AC shall, whenever appropriate, include a restrictive legend suitable to 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 AC's Proprietary Information and Materials.

Upon AC's request at any time, and in any event upon the completion, termination or cancellation of any Agreement, Seller shall return all of AC's Proprietary Information and Materials, and all materials derived from AC's Proprietary Information and Materials to AC unless specifically directed otherwise in writing by AC. Seller shall not, without the prior written authorization of AC, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying, or made in accordance with or by reference to any Proprietary Information and Materials of AC. Prior to disposing of such parts or materials as scrap, Seller shall render them unusable. AC shall have the right to audit Seller's compliance with this Section 20.0. Seller may disclose Proprietary Information and Materials of AC to its subcontractors or suppliers as required for the performance of an Order, provided that each such subcontractor first assumes, by written agreement, the same obligations imposed upon Seller under this Section 20.0 relating to Proprietary Information and Materials; and Seller shall be liable to AC for any breach of such obligation by such subcontractor or supplier. The provisions of this Section 20.0 are effective in lieu of, and will apply notwithstanding the absence of, any restrictive legends or notices applied to Proprietary Information and Materials; and the provisions of this Section 20.0 shall survive the performance, completion, termination or cancellation of these terms or any Order. This Section 20.0 supersedes and replaces any and all other prior agreements or understandings between the parties to the extent that such agreements or understandings relate to AC's obligations relative to confidential, proprietary, and/or trade secret information, or tangible items containing, conveying, or embodying such information, obtained from Seller and related to any Product, regardless of whether disclosed to the receiving party before or after the effective date of acceptance of these terms.

## **21.0 COMPLIANCE**

### **21.1 COMPLIANCE WITH LAWS**

Seller shall be responsible for complying with all legal requirements, including, but not limited to the provisions of any statute, ordinance, rule, regulation, judgment, decree, order, permit, approval, license or registration applicable to its performance under these terms. Seller shall notify AC of any aspect of Seller's performance that is prohibited under any legal requirements, at the earliest opportunity, but in all events sufficiently in advance of Seller's performance of such obligation, so as to identify and implement alternative methods of performance. Seller shall notify AC in writing at the earliest possible opportunity of any aspect of its performance, which becomes subject to any additional legal requirement after the date of execution of these terms or which Seller reasonably believes will become subject to additional regulation during the term of operation under these terms. Seller agrees to indemnify and to hold harmless AC from any failure by Seller to comply with any legal requirement.

In addition, Seller shall (i) comply with all applicable country laws relating to anticorruption or anti-bribery, including but not limited to legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention") or other anti-corruption/anti-bribery convention; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended, (FCPA) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States; and (iii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything

of value received from AC to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

## **21.2 GOVERNMENT REQUIREMENTS**

If any of the work to be performed under this Agreement is performed in the United States, Seller shall, via invoice or other form satisfactory to AC, certify that the Products or Services covered by the Order were produced in compliance with Sections 6, 7, and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219), as amended, and the regulations and orders of the U.S. Department of Labor issued there under. In addition, the following FAR clauses are incorporated herein by this reference except "Contractor" shall mean "Seller". Other Government clauses, if any, are incorporated herein either by attachment to this document or by some other means of reference. The Seller shall include these FAR clauses in subcontracts that support this Agreement.

FAR 52.244-6 Subcontracts for Commercial Items.

FAR 52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

FAR 52.222-50 Combating Trafficking in Persons except as modified below:

The term "Contractor" shall mean "Seller", except the term "prime contractor" shall remain unchanged. The term "Contracting Officer" shall mean "Contracting Officer" and the Buyer's Authorized Procurement Representative in paragraph (d)(1). Paragraph (d)(2) shall read as follows: "If the allegation may be associated with more than one contract, the Seller shall inform the contracting officer, the agency Inspector General, and the Buyer's Authorized Procurement Representative for each affected contract". The term "the Government" shall mean "the Government Buyer" in paragraph (e)(1). The term "termination" shall mean "cancel" and "cancellation for default", respectively, in paragraph (e)(6). Insert the following at the end of paragraph (e): "If the Government exercises one of the remedies identified in paragraph (e) against Buyer as a result of the Seller's violation of its obligations under this clause, Buyer may impose an equivalent against the Seller". The term "Contracting Officer" shall mean "Contracting Officer and Buyer" in paragraph (f), except in paragraph (f)(2), where it shall mean "Contracting Officer or Buyer". Paragraph (h)(2)(ii) shall read as follows: "To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons."

- The term "Contracting Officer" shall mean "Contracting Officer or Buyer" in paragraph (h)(4)(ii). The term "Contracting Officer" shall mean "Buyer" in paragraph (h)(5).

In addition, the 199S clauses listed below, are incorporated herein and made a part of the contract by this reference except that "Contractor" shall mean "Seller." The Seller shall include these DFARS clauses in subcontracts that support this contract.

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS).

252-204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.

<https://www.acquisition.gov/dfars/part-252-solicitation-provisions-and-contract-clauses#DFARS-252.204-7012>

*252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements.*

<https://www.acquisition.gov/dfars/252.204-7019-notice-nist-sp-800-171-dod-assessment-requirements>.

*252.204-7020 NIST SP 800-171 DoD Assessment Requirements.*

<https://www.acquisition.gov/dfars/252.204-7020-nist-sp-800-171-dod-assessment-requirements>.

*252.204-7021 Cybersecurity Maturity Model Certification Requirements.*

<https://www.acquisition.gov/dfars/252.204-7021-cybersecurity-maturity-model-certification-requirements>.

252-223-7008 Prohibition of Hexavalent Chromium.

252-227-7015 Technical Data – Commercial Items, applies if any technical data related to commercial items developed in any part at private expense will be obtained from Seller for delivery to the Government.

252.227-7037 Validation of Restrictive Markings on Technical Data.

252-246-7003 Notification of Potential Safety Issues.

### **21.3 ETHICS AND COMPLIANCE PROGRAM**

Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Agreement. AC strongly encourages Seller to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under the Agreement that they may report any concerns of misconduct by AC or any of its employees or agents by contacting AC's Human Resources Department. Seller shall convey the substance of this clause to its suppliers.

### **21.4 CODE OF BASIC WORKING CONDITIONS AND HUMAN RIGHTS**

AC is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, AC has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled. The AC Code may be downloaded at AC strongly encourages Seller to adopt and enforce concepts similar to those embodied in the AC Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller will promptly cooperate with and assist AC in implementation of and adherence to the AC Code. Further, any material violation of law by Seller of applicable laws relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, of the country or countries in which Seller is performing of work under this Agreement may be considered a material breach of this Agreement for which AC may elect to cancel any open Orders between AC and the Seller, for cause, in accordance with the provisions of this Agreement, or exercise any other right of AC for an Event of Default under this Agreement.

### **21.5 ENVIRONMENTAL HEALTH AND SAFETY PERFORMANCE**

Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this contract. AC expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirements of this Section to its suppliers.

### **21.6 RESERVED**

### **21.7 CONFLICT MINERALS**

Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any Products to AC, under this Agreement or otherwise, notify AC's Purchasing Agent of any use of materials listed under the "Conflict Minerals" as noted in the CONFLICT FREE SOURCING INITIATIVE's website (<http://www.conflictreesourcing.org/>). Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Section.

## **22.0 INTEGRITY IN PROCUREMENT**

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 AC's employees, agents or representatives for the purpose of securing any Order or securing favorable treatment under any Order.



### **23.0 UTILIZATION OF SMALL BUSINESS CONCERNS**

Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, historically underutilized business zone small business concerns and U.S. veteran and service-disabled veteran owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of under these terms.

### **24.0 AC'S RIGHTS IN SELLER'S PATENTS, COPYRIGHTS, TRADE SECRETS, AND TOOLING**

Seller hereby grants to AC an irrevocable, nonexclusive, paid-up worldwide license to practice and/or use, and license others to practice and/or use on AC'S behalf, all of Seller's patents, copyrights, trade secrets (including, without limitation, designs, processes, drawings, technical data and tooling), industrial designs, semiconductor mask works, and tooling (collectively hereinafter referred to as "Licensed Property") related to the development, production, maintenance or repair of Products or Services. AC hereafter retains all of the aforementioned license rights in Licensed Property, but AC hereby covenants not to exercise such rights except in connection with the making, having made, using and selling of Products or Services or products of the same kind provided that such Product cannot, in AC'S sole determination, be reasonably obtained in the required time frame at a reasonable price from commercially available sources (including AC) without the use of Seller's Licensed Property and if one or more of the following situations occur:

- A. Seller discontinues or suspends business operations or the production of any or all of the Products or Services;
- B. Seller is acquired by or transfers any or all of its rights to manufacture any Product to any third party, whether or not related, without AC's prior written concurrence;
- C. AC cancels any Agreement or any Order for cause pursuant to Section 13.0 herein;
- D. In AC's judgment it becomes necessary, in order for Seller to comply with these terms or any Order, for AC to provide support to Seller (in the form of design, manufacturing, or on-site personnel assistance) substantially in excess of that which AC normally provides to its suppliers;
- E. Seller's trustee in bankruptcy (or Seller as debtor in possession) fails to assume these terms and all Orders by formal entry of an order in the bankruptcy court within sixty (60) days after entry of an order for relief in a bankruptcy case of the Seller, or AC elects to retain its rights to Licensed Property under the bankruptcy laws; Seller is at any time insolvent (whether measured under a balance sheet test or by the failure to pay debts as they come due) or the subject of any insolvency, receivership or assignment for the benefit of creditors proceeding under state or non-bankruptcy law; or
- F. Seller voluntarily becomes a debtor in any case under bankruptcy law or, in the event an involuntary bankruptcy petition is filed against Seller, such petition is not dismissed within thirty (30) days. As a part of the license granted under this Section 24.0, Seller shall, at the written request of AC and at no additional cost to AC, promptly deliver to AC any and all Licensed Property considered by AC to be necessary to satisfy AC's requirements for Products or Services and their substitutes.

### **25.0 TERMINATION OF AIRPLANE PROGRAM**

#### **25.1 PROGRAM TERMINATION**

The parties acknowledge and agree that AC may, in its sole discretion, terminate all or part of these terms, including any Order issued hereunder, by written notice to Seller, if AC decides not to initiate or continue production of the program which the Product supports, by reason of AC's determination that there is insufficient business basis for proceeding with such program. In the event of such a termination, AC shall have no liability to Seller except as expressly provided in Section 25.2 below.

**25.2 TERMINATION LIABILITY**

In the event of a termination of the program as described in 25.1 above, AC shall have no liability whatsoever to Seller, except to the extent of (i) any guaranteed minimum purchase, if any, as set forth in any LTA, and (ii) any Orders issued prior to the date of the written notice to Seller identified in 25.1 above. Termination of such Orders shall be governed by Section 12.0 herein.

**26.0 PUBLICITY**

Without AC's prior written approval, Seller shall not, and shall require that its subcontractors or suppliers shall not, release any publicity, advertisement, news release or denial or confirmation of the same, regarding any Order or Products or Services, or the program to which they may pertain. Seller shall be liable to AC for any breach of such obligation by any subcontractor or supplier.

**27.0 PROPERTY INSURANCE****27.1 INSURANCE**

Seller shall obtain and maintain continuously in effect a property insurance policy covering loss or destruction of or damage to all property in which AC does or could have an insurable interest pursuant to these terms, including but not limited to Tooling, AC furnished property, raw materials, parts, work-in-process, incomplete or completed assemblies and all other Products or Services or parts thereof, and all drawings, specifications, data and other materials relating to any of the foregoing in each case to the extent in the possession or under the effective care, custody or control of Seller or any agent, employee, affiliate, subcontractor or supplier of Seller, in the amount of full replacement value thereof providing protection against all perils normally covered in an "all risk" property insurance policy (including without limitation fire, windstorm, explosion, riot, civil commotion, aircraft, earthquake, flood or other acts of God). Any such policy shall be with insurers reasonably acceptable to AC. Seller shall maintain insurance in the following amounts: (i) Worker's Compensation - Statutory limit; (ii) Employer's Liability - \$500,000.00; (iii) Commercial General Liability - \$5,000,000.00 combined single limit insurance per occurrence. Commercial general liability insurance shall include endorsements for: personal injury; contractual liability; completed operations; naming AC as an additional insured; and provide severability of interest, cross liability and independent contractors' coverage); (iv) Product Liability Insurance - \$100,000,000.00; and (v) Business Auto Policy - \$1,000,000.00 combined single limit. (Such insurance to cover owned, non-owned and hired vehicles when doing work on AC's or AC's customers' premises.) and shall (a) provide for payment of loss thereunder to AC, as loss payee, as its interests may appear and (b) contain a waiver of any rights of subrogation against AC, its subsidiaries, and their respective directors, officers, employees and agents.

**27.2 CERTIFICATE OF INSURANCE**

Upon written request from AC, Seller shall provide to AC's Procurement Representative certificates of insurance reflecting full compliance with the requirements set forth in Section 27.1. Such certificates shall be kept current and in compliance throughout the period of these terms and shall provide for thirty (30) days advanced written notice to AC's Procurement Representative in the event of cancellation, nonrenewal or material change adversely affecting the interests of AC.

**27.3 NOTICE OF DAMAGE OR LOSS**

Seller shall give prompt written notice to AC's Procurement Representative of the occurrence of any damage or loss to any property required to be insured herein. If any such property shall be damaged or destroyed, in whole or in part, by an insured peril or otherwise, and if no Event of Default shall have occurred and be continuing, then Seller may, upon written notice to AC, settle, adjust, or compromise any and all such loss or damage not in excess of Two Hundred Fifty Thousand Dollars (\$250,000) in any one occurrence and Five Hundred Thousand Dollars (\$500,000) in the aggregate. Seller may settle, adjust or compromise any other claim by Seller only after AC has given written approval, which approval shall not be unreasonably withheld.

## **28.0 RESPONSIBILITY FOR PERFORMANCE**

Seller shall be responsible for performance of its obligations under these terms. Seller shall bear all risks of providing adequate facilities and equipment to perform each Order in accordance with the terms thereof. If any use of any facilities or equipment contemplated by Seller for use in performing Orders will not be available for any reason, Seller shall be responsible for arranging for similar facilities and equipment at no cost to AC, and any failure to do so shall not relieve Seller from its obligations. Seller shall notify and obtain written approval from AC prior to moving work to be performed under these terms between Seller's various facilities

### **28.1 SUBCONTRACTING**

Seller shall maintain complete and accurate records regarding all subcontracted items and/or processes. Seller's use of subcontractors or suppliers shall comply with Seller's quality assurance system approval for said subcontractors or suppliers. Unless AC's prior written authorization or approval is obtained, Seller may not purchase completed or substantially completed Products or Services. For purposes of this Section and this Section only, completed or substantially completed Products or Services shall not include components of assemblies or subassemblies. No subcontracting by Seller shall relieve Seller of its obligation under the applicable Order. Utilization of an AC-approved source does not constitute a waiver of Seller's responsibility to meet all specification requirements. Seller shall include as part of its subcontracts those elements of the Agreement that protect AC's rights including but not limited to right of entry provisions, proprietary information and rights provisions and quality control provisions. In addition, Seller shall provide to its subcontractor's sufficient information to document clearly that the work being performed by Seller's subcontractor is to facilitate performance under these terms or any Order.

### **28.2 RELIANCE**

Entering into these terms and any other Agreement is in part based upon AC's reliance on Seller's ability, expertise and awareness of the intended use of the Products or Services. Seller agrees that AC and AC's Customers may rely on Seller as an expert, and Seller will not deny any responsibility or obligation hereunder to AC or AC's Customers on the grounds that AC or AC's Customers provided recommendations or assistance in any phase of the work involved in producing or supporting the Products or Services, including but not limited to AC's acceptance of specifications, test data or the Products or Services.

### **28.3 ASSIGNMENT**

Seller shall not assign any of its rights or interest in these terms or any Order, or subcontract all or substantially all of its performance of these terms or any Order, without AC's prior written consent. Seller shall not delegate any of its duties or obligations under these terms. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without AC's consent, shall relieve Seller of any of its obligations under these terms or prejudice any rights of AC against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw material. The prohibition set forth in this GTA Section 28.3 includes, without limitation (and the following shall be deemed to be "assignments"): (i) a consolidation or merger of Seller; (ii) a change in the ownership or voting rights of more than fifty percent (50%) of the issued and outstanding stock of any corporate Seller; (iii) any assignment or transfer which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other significant change in corporate or proprietary structure; (iv) the sale, assignment or transfer of all or substantially all of the assets of Seller; and (v) where Seller is a partnership, a change in control in such partnership.

## **29.0 NON-WAIVER/PARTIAL INVALIDITY**

Any failures, delays or forbearances of AC in insisting upon or enforcing any provisions of any Order, or in exercising any rights or remedies under these terms, 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. If any provision of any Order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

### **30.0 HEADINGS**

Section headings used in these terms are for convenient reference only and do not affect the interpretation of the Agreement.

### **31.0 LICENSING**

Seller agrees that the use of AC Proprietary Information and Materials as defined in Section 20.0 beyond that authorized by these terms shall be subject to a license agreement or other written instrument as determined by the AC.

### **32.0 ELECTRONIC ACCESS**

The following provisions set forth the additional requirements for Seller's Electronic Access to the AC Systems. For purposes of the work to be performed under this contract, the provisions set forth herein relative to Electronic Access shall supersede and replace any prior agreements related to Electronic Access. For purposes of these provisions "Electronic Access" is defined as access by Seller or any Seller Personnel to the AC Systems using any access or transmission method, including without limitation the World Wide Web, Internet, or private data transmission lines. For purposes of this provision, "AC Systems" is defined as any electronic information systems operated by or on behalf of AC, including without limitation, facilities, network equipment, telecommunications networks, software, files and data. For the purpose of this provision, Seller Personnel is defined as any of Seller's employees, contract labor, consultants, advisers, or leased employees who have been authorized to access AC Systems. Subject to AC revocation or termination at AC's discretion, AC grants to Seller a limited, nontransferable, nonexclusive revocable right to access the AC Systems electronically, solely during the term of the contract and solely to the extent authorized by AC and necessary for Seller perform under, and in accordance with the terms of, this contract. Seller shall not access or use the AC Systems for any other purpose. Without limiting the generality of the foregoing, Seller shall not, unless authorized in writing by AC: (a) export or save locally any Proprietary Information and Materials from the AC Systems to Seller's system or any other computing resources or media except in support of the work to be performed under this contract, (b) make any derivative uses of the AC Systems or the Proprietary Information and Materials except in support of the work to be performed under this contract, (c) use any data mining, robots, or similar data gathering and extraction methods, (d) use any frame or framing techniques to enclose any Proprietary Information and Materials found on the AC Systems, or (e) access any Proprietary Information and Materials marked as "AC Proprietary" or "Limited" (whether electronically or in hard copy) or "Limited Distribution" (collectively, the "Unauthorized Proprietary Information and Materials") or (f) attempt to gain access to Unauthorized Proprietary Information and Materials or restricted portions of the AC System through reverse engineering, decompiling, or disassembling any portion of the Access Controls, for purposes of this provision Access Controls means a set of controls and/or mechanisms used to authenticate the identity of a system user and authorize access, including, but not limited to, user identifications and passwords, tokens, smart cards and biometrics. If Seller inadvertently accesses any Unauthorized Proprietary Information and Materials or restricted portions of the AC Systems, Seller shall: (1) not read such Unauthorized Proprietary Information and Materials, (2) notify AC of such inadvertent access to Unauthorized Proprietary Information and Materials, and (3) cooperate with AC to avoid future access to Unauthorized Proprietary Information and Materials and/or AC Systems. Seller acknowledges that any attempts by Seller or any Seller Personnel to circumvent any security measures designed to prevent unauthorized access to AC Systems may be in violation of the U.S. Federal Computer Fraud and Abuse Act and other applicable laws, may subject the violator to criminal and civil penalties, and will be grounds for immediate suspension of Electronic Access and for termination of the contract. This provision does not grant to Seller any ownership interest in, or any express or implied license or right to, any of the Proprietary Information and Materials or to any software or intellectual property rights owned by AC or any third party. Seller agrees that it will abide by and shall not remove any restrictive legends or markings in the Proprietary Information and Materials or AC Systems. If Seller is unsure about the scope of authorized Electronic Access, Seller agrees to contact AC's Authorized Procurement Representative for instruction. Seller may request, and AC may provide in its sole discretion, Electronic Access for Seller Personnel on a "need to know" basis for Seller to fulfill its obligations or perform under the contract. Seller shall: (1) ensure that all Seller Personnel with Electronic Access review and agree in writing to abide by the terms of this provision, and any other applicable provision contained in this contract, prior to Seller requesting Electronic Access for such Seller Personnel, (2) maintain complete and accurate records of all Seller Personnel who are granted Electronic Access, and provide such records to AC upon request, and (3) be fully responsible for the acts and omissions of all



Seller Personnel with respect to their Electronic Access, including without limitation, Seller Personnel's use or disclosure of Proprietary Information and Materials obtained through such Electronic Access, or Seller Personnel's actions while in possession of such Proprietary Information and Materials. Prior to initiating any Electronic Access, each Seller Personnel who needs Electronic Access will be required to: (a) obtain from AC an Electronic Access account and access controls, and (b) participate in a security briefing in accordance with AC specifications. Seller shall assign a single focal (who may be changed at any time with written notice to AC) to initiate requests for Electronic Access for Seller Personnel, to coordinate security briefings, to coordinate with AC regarding notices of actual or potential security breaches, and to maintain records. Seller shall take all reasonable precautions to prevent the loss, disclosure, reverse engineering, or compromise of Access Controls. Seller shall immediately notify AC if it believes that any Access Control has been compromised. Seller shall ensure that Seller Personnel do not access the Electronic Access through any mechanism other than the Access Controls, regardless of whether such alternative is available. Seller acknowledges that the access controls are for specific individual use only and are not transferable and shall be maintained in confidence by Seller. Seller agrees to review (at least every 3 months) each of Seller Personnel's Electronic Access requirements; provided, however that Seller agrees to immediately initiate a request to terminate the Electronic Access of individual Seller Personnel in the event of the reassignment, resignation or termination of any Seller Personnel to whom Electronic Access has been granted.

AC may be required to obtain information concerning citizenship or immigrant status of Seller Personnel obtaining Electronic Access. Seller agrees to furnish this information when requesting Electronic Access. Information submitted by Seller shall be certified by an authorized representative of Seller as being true and correct. Access to certain AC Systems may be limited due to AC compliance with applicable U.S. export control laws. Where access is granted, Seller shall be responsible for obtaining all export licenses required, where applicable, for each such Seller Personnel, including to allow such Seller Personnel to perform the work to which he or she is assigned, and Seller shall comply with any additional export control restrictions as required by applicable laws, rules and regulations. To the fullest extent consistent with Applicable Law, AC has the right to monitor, record, retrieve and disclose to others (including, but not limited to, law enforcement officials) all information, including the content of communications, related to any Electronic Access by Seller and Seller Personnel. In the event Seller discovers or is notified of a security breach or potential security breach, Seller shall immediately: 1) notify AC of such security breach or potential security breach and of the Proprietary Information and Materials involved; and, 2) assist AC in investigating, remedying (including assurance of no recurrence) and taking any other action v deems necessary regarding any security breach or potential security breach and any dispute, inquiry or claim that concerns such security breach or potential security breach. Seller shall make the notification required in this Section by sending to AC, with a courtesy copy to the applicable procurement representative, an electronic mail message specifying the information required in this Section. Nothing contained in this Section is intended to limit any of AC's rights or remedies under this contract or otherwise. Seller agrees to permit AC to review its security control procedures and practices via physical or electronic access by AC, including access to Seller facilities in which such systems are located, as well as any and all premises where maintenance, storage or backup activities are performed. Seller agrees to assist AC in investigating, remedying (including assurance of nonrecurrence) and taking any other action AC deems necessary regarding any security breach or potential security breach and any dispute, inquiry or claim that concerns such security breach or potential security breach. SELLER EXPRESSLY AGREES THAT AC MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RELIABILITY OF ELECTRONIC ACCESS. Any material breach of this Section 32.0 by Seller may be considered a major breach of this contract for which AC may elect to cancel any open orders between AC and the Seller, for cause, in accordance with the provision of this GTA Section 13.0 "Cancellation for Default" or exercise any other right of AC for an Event of Default under this contract.

### **33.0 DISPUTES**

AC and Seller shall use their best reasonable efforts to resolve any and all disputes, controversies, claims or differences between AC and Seller, arising out of or relating in any way to these terms and any LTA or a Party's performance thereunder, including, but not limited to, any questions regarding the existence, validity or termination hereof ("Disputes"), through negotiation. If a Dispute cannot be resolved by the functional representatives of AC and Seller, it shall be referred up through management channels of the Parties or their respective designees, for further negotiation. Any dispute that arises under or is related to these terms that cannot be settled by mutual agreement of the parties shall

be resolved only as provided in Section 34. Pending final resolution of any dispute, Seller shall proceed with performance of these terms according to AC's instructions so long as AC continues to pay amounts not in dispute.

### **34.0 GOVERNING LAW**

These Terms shall be governed by the laws of the State of California. Seller hereby irrevocably consents to and submits itself exclusively to the jurisdiction of the applicable courts of Orange County, California and the federal courts of the State of California for the purpose of any suit, action or other judicial proceeding arising out of or connected with any Order or the performance or subject matter thereof. Seller hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that (a) Seller is not personally subject to the jurisdiction of the above-named courts, (b) the suit, action or proceeding is brought in an inconvenient forum or (c) the venue of the suit, action or proceeding is improper.

### **35.0 TAXES**

#### **35.1 INCLUSION OF TAXES IN PRICE**

Unless these terms, 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 these terms and the Orders issued hereunder, except for sales or use taxes on sales to AC ("Sales Taxes") for which AC specifically agrees to pay and which are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which AC has furnished a valid exemption certificate or other evidence of exemption.

#### **35.2 LITIGATION**

In the event that any taxing authority has claimed or does claim payment for sales taxes, Seller shall promptly notify AC, and Seller shall take such action as AC may direct to pay or protest such taxes or to defend against such claim. The actual and direct expenses, without the addition of profit and overhead, of such defense and the amount of such taxes as ultimately determined as due and payable shall be paid directly by AC or reimbursed to Seller. If Seller or AC is successful in defending such claim, the amount of such taxes recovered by Seller, which had previously been paid by Seller and reimbursed by AC or paid directly by AC, shall be immediately refunded to AC.

#### **35.3 REBATES**

If any taxes paid by AC are subject to rebate or reimbursement, Seller shall take the necessary actions to secure such rebates or reimbursement and shall promptly refund to AC any amount recovered.

### **36.0 WARRANTY**

BY ACCEPTING ANY ORDER FROM AC, SELLER EXPRESSLY WARRANTS THAT THE GOODS ORDERED SHALL BE FREE FROM DEFECT IN MATERIAL OR WORKMANSHIP. SELLER AGREES THAT THE REPRESENTATIONS, COVENANTS AND WARRANTIES SET FORTH IN THIS SUB ARTICLE SHALL SURVIVE INSPECTION, TEST, ACCEPTANCE OF AND/OR PAYMENT FOR THE GOODS OR SERVICES BY AC AND TERMINATION OF THIS ORDER FOR A PERIOD OF SIXTY (60) MONTHS FROM THE TIME OF DELIVERY OF THE GOODS TO AC AND SHALL BE IN ADDITION TO ANY WARRANTIES OF ADDITIONAL SCOPE GIVEN TO AC BY SELLER. THESE REPRESENTATIONS, COVENANTS AND WARRANTIES SHALL RUN TO AC AND ITS SUCCESSORS, ASSIGNS AND CUSTOMERS, AND TO THE USERS OF AC'S PRODUCTS. ACCEPTANCE OR USE OF THE GOODS AND/OR SERVICES FURNISHED BY SELLER HEREUNDER OR PAYMENT THEREFORE SHALL NOT AFFECT ANY OF SELLER'S OBLIGATIONS UNDER THIS SECTION.

### **37.0 ATTORNEYS' FEES**

In the event any action or proceeding is brought to enforce, interpret or determine the rights of AC and Seller under this Order, the prevailing party (i.e., the party who, in light of the causes of action asserted and the relief sought, is afforded the greater relief) shall be entitled to recover from the other attorneys' fees and court costs incurred in connection with any such action or proceeding.

**38.0 OBSOLESCENCE**

Seller shall immediately notify AC upon discovery of actual or pending obsolescence of any part or parts of goods supplied hereunder and promptly resolve any issue arising from the obsolescence of any such part or parts at no cost to AC and/or its customers. Seller shall use all commercially reasonable efforts to obtain guarantees of availability of critical and single-sourced parts incorporated in goods supplied to AC hereunder.

**39.0 TOOLING**

Notwithstanding other provisions in these terms regarding tooling, Seller is to furnish all standard tools, taps, dies, cutters, gauges and fixtures. If the terms of any Order prescribe supply or reimbursement by AC for tooling for tooling, tooling material, and any other items related to tooling including any inspection devices or other related, and otherwise whereby AC may furnish tooling at Seller's convenience, Seller expressly understands that in so doing AC makes no guarantee whatsoever as to the accuracy of the tools furnished. No designs, tools, patterns or drawings supplied by AC to Seller for use in manufacture of articles contracted for herein shall be used in the production, manufacture or design of any other articles for any other AC or for the maintenance or production of larger quantities than those specified, except with the express consent in writing of AC. At the termination of this Order, they, together with all excess materials, shall be disposed of or returned to AC as directed by AC. All such designs, tools, patterns, drawings and materials supplied by Applied Composites shall be segregated by Seller in Seller's plant, and wherever possible, clearly marked so as to be easily identified as belonging to AC or AC Customer. Where materials are furnished by AC, title to and/or the right of immediate possession of such materials in all stages of manufacture shall be and remain in AC.

**40.0 INDUSTRIAL PARTICIPATION**

To the exclusion of all others, AC or its assignee shall be entitled to all industrial benefits or offset credits which might result from these terms or Order. Seller shall provide documentation or information, which AC or its assignee may reasonably request to substantiate claims for industrial benefits or offset credits. Seller agrees to use reasonable efforts to identify the foreign content of goods, which Seller either produces itself or procures from other companies for work directly related to these terms. Promptly after selection of a non-U.S. subcontractor or supplier for work under these terms, Seller shall notify AC of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.