

STANDARD TERMS AND CONDITIONS OF PURCHASE
For
Commercial Purchases of Goods and Services

TABLE OF CONTENTS

ACCEPTANCE

DEFINITIONS

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Specifications
2. Delivery
3. Inspection, Acceptance & Rejection
4. Warranty
5. Remedies for Breach of Warranty or Delivery
6. Indemnification
7. Price Warranty
8. Shipping Instructions
9. Invoicing
10. Inspection of Records
11. Changes
12. Compliance With Laws
13. Delays
14. Termination for Default
15. Termination for Convenience
16. Stop- Work Order
17. Duty to Proceed
18. Partial Invalidity/Unenforceability
19. Survival
20. No Waiver
21. Attorney Fees
22. Applicable Law and Forum
23. Cumulative Remedies
24. Interpretations and Order of Precedence
25. Electrostatic Discharge Control Requirements
26. Assignments and Setoff
27. Intellectual Property Rights
28. Infringement Indemnity

ACCEPTANCE

- A. This Purchase Order must be accepted in writing by Supplier within the time specified on the face of this Order or, if not so specified, within a reasonable time of Supplier's receipt hereof.
- B. If for any reason Supplier fails to accept this Order in writing, the shipment by Supplier of any Goods (or lots thereof) ordered hereby, the furnishing or commencement of any Services called for hereunder (including preparation for manufacture), or the acceptance of any payment by Supplier hereunder, or any other conduct by Supplier that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an qualified acceptance by Supplier of this Order and all terms and conditions hereof.
- C. Any terms and conditions proposed in Supplier's acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflicts with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Order shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties, and shall apply to each shipment received by Buyer from Supplier hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of the Supplier. In the event any such proposed terms would, if accepted by Buyer, vary the liability or warranty, aspects of these terms then such proposed terms will be null and void unless a member of Buyer's legal department makes the acceptance by Buyer in writing.
- D. If this Order is issued by Buyer in response to an offer by Supplier and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Supplier assent to all such additional and different terms herein and acknowledge that this Order constitutes the entire agreement between Buyer and Supplier with respect to the subject matter hereof. Supplier shall be deemed to have so assented and acknowledged unless Supplier notifies Buyer to the contrary in writing within ten (10) calendar days of receipt of this Order.

DEFINITIONS

As used throughout this Order, the following definitions apply, unless otherwise specifically stated:

- A. "Buyer" means ATC Aerospace, a Division of Argo Turboserve Corporation, or a subsidiary, division affiliate, successor, or assign of ATC Aerospace or other entity issuing this Order, or issuing any order under any agreement to which these terms and conditions are attached or referenced therein, or to any entity to which this Order is assigned pursuant to this Order.
- B. "Purchase Order", "Order", or "Agreement" means this agreement, including change notices, supplements, amendments, or modifications thereto, except where the context indicates that a particular Purchase Order document or other particular document is being referred to.
- C. "Supplier" or "Contractor" means the legal entity providing Goods and Services or otherwise performing work pursuant to this Order. (Nord Micro Elektronik)
- D. "Goods" means goods, supplies, or items that include, but are not limited to, those part numbers, model numbers, and/or descriptions set forth on the face of this Order. These terms also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order.
- E. "Services" means any effort supplied by Supplier incidental to the sale of Goods by Supplier under this Order including, without limitation, installation, repair and maintenance Services. The term "Services" shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. **Specifications:**

Supplier shall comply with all specifications stated in this Order and contained in Supplier's product literature or proposal to the extent consistent with this Order.

2. **Delivery:**

Time is of the essence. The Goods or Services covered by this Order must be delivered by the date(s) specified.

3. **Inspection, Acceptance & Rejection:**

- (a) Supplier shall provide and maintain, without additional charge to Buyer, an inspection system that complies with all specifications stated in this Order and, in the absence of such specifications, Supplier shall be required to provide and maintain without additional charge to Buyer, an inspection system, which is acceptable to Buyer and, if applicable, Buyer's customer.
- (b) Supplier shall render to Buyer for acceptance only Goods that have been inspected in accordance with the appropriate inspection system and have been found by Supplier to be in conformity with all requirements of this Order.
- (c) As part of the inspection system, Supplier shall, prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this Order and for as long afterward as required by this Order or applicable laws and regulations, but in no event shall such period expire prior to: (i) three (3) years after final payment, or (ii) final resolution of any dispute involving the Goods delivered hereunder, whichever is later.
- (d) Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this Section. Such reviews and evaluations shall be conducted in a manner that will not unduly delay work under this Order. Further, it is recognized that despite such revisions, Supplier controls the day-to-day production, delivery and associated documentation of its work, and therefore, Buyer's right of review, whether exercised or not, does not release Supplier of any of its obligations of testing, inspection, quality control and associated documentation.
- (e) Buyer, the United States Federal Aviation Administration, the airworthiness authority or other certification agency of any other applicable country, and Buyer's customer shall have the right to inspect and test the material and workmanship of all Goods at all places and times including, when practicable, during the period of manufacture or provision of Services. If any such inspection or test is made on the premises of Supplier, Supplier shall furnish, without additional charge to any such party(ies) all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.
- (f) Nonconforming Goods: Notwithstanding (i) prior inspection, (ii) acceptance, (iii) payment for, or (iv) use of the Goods ordered hereunder, Buyer shall have the following rights with respect to any Goods that do not conform to all requirements of this Order, at Buyer's election, exercisable within the period provided in this Order or, in the absence thereof, within one (1) year following Buyer's receipt of the Goods called for hereunder:

- (i) Buyer shall have the right to reject such Goods. All such rejected Goods shall be returned to Supplier at Supplier's risk and expense, transportation collect and declared at full value unless Supplier advises otherwise, for full credit or refund (at Buyer's option). Supplier shall not replace the rejected Goods returned to Supplier, except upon written instructions from Buyer. Rejected Goods shall not again be tendered to Buyer for acceptance without written disclosure of prior rejection(s); and
- (ii) Nonconforming Goods may be repaired by Buyer or a third party selected by Buyer, at Supplier's expense, or retained by Buyer at an equitable reduction in price at Buyer's election. Should Buyer elect to repair the nonconforming Goods, all terms and conditions of this Order shall remain in full force and effect as to the Goods furnished by Supplier.
- (g) Buyer's or any other party's inspection or test, acceptance, payment for, or use of the Goods ordered hereunder does not relieve Supplier from any responsibility regarding defects or other failures to meet the requirements of this Order.
- (h) Buyer's rights under this Section shall be in addition to and shall not be deemed to diminish its rights under this Order including the section hereof entitled "Warranty" or under any other warranties, express or implied, provided by Supplier.

4. **Warranty:**

- (a) Goods: Supplier warrants to Buyer, its successors, assigns, customers, and users of Goods sold by Buyer that all Goods provided hereunder or serviced per the work scope provided hereunder shall be: (i) merchantable, (ii) new (unless specifically agreed to in writing), (iii) free from defects in material and workmanship, (iv) with regard to Goods designed by Supplier, free from defects in design, (v) suitable for the particular purposes intended whether expressed or reasonably implied, (vi) in compliance with all applicable specifications, drawings, and performance requirements, and (vii) free from security interests, liens or encumbrances and of good title. Buyer's remedies with respect to this warranty shall not be limited, restricted or disclaimed in whole or part by any other provision of this Order. This representation and warranty is in addition to any other representations and warranties in this Order.
- (b) Services: Supplier warrants to Buyer that any Services or technical data provided by Supplier under this Order (i) have been performed or prepared in a professional and workmanlike manner and according to best industry standards and practices, (ii) are suitable for the purposes intended whether expressed or implied, and (iii) are in compliance with all applicable specifications and performance requirements.
- (c) Delivery, inspection, test, acceptance or use of or payment for the Goods and Services furnished hereunder shall not affect Supplier's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use.

5. **Remedies for Breach of Warranty or Delivery**

- (a) Supplier agrees to correct defects in or replace any Goods or Services not conforming to Supplier's warranties promptly and without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Supplier with the opportunity to do so. Deliveries of corrected or replaced Goods or Services shall be accomplished promptly and shall be accompanied by written notice specifying that such Goods or Services are corrected or replaced Goods.
- (b) In the event that Buyer incurs additional costs or Buyer's customer charges Buyer for additional costs related to a breach of Supplier's warranties or a breach of delivery terms by Supplier, Supplier agrees that Buyer shall have the right to:
 - (i) Reduce the amount payable under this Order; including, without limitation; deduction or setoff pursuant to this Order; and
 - (ii) Charge Supplier for additional costs or customer charges greater than the amount of this Order or otherwise not deductible against this Order.
- (c) In the event of a breach by Supplier of any warranties or the failure of Supplier to correct defects in or replace nonconforming Goods promptly, Buyer may recover, in addition to compensatory damages, any and all other damages allowed by law.
- (d) Supplier acknowledges that Buyer may recover all damages or costs it incurs as a result of or relating to Supplier's breach of any warranties or the failure of Supplier to correct defects in or replace nonconforming Goods promptly. While Buyer may have available to it contractual or other limitations with respect to its own customers, Buyer may in some instances decide to provide corrective Goods and/or Services, and/or reimburse such customers for quality issues, losses and for damages beyond Buyer's strict contractual or legal obligations. Where such corrective action payments and/or expenses by Buyer result from or are related to defects or failures by Supplier in Supplier's Goods and/or Services, Buyer may recover for such corrective action, payment and/or expenses from Supplier.

6. **Indemnification**

- (a) Supplier covenants and agrees to indemnify, protect, and hold harmless Buyer, its officers, directors, employees and agents ("Indemnified Person") from any and every liability, claim of liability, allegation, judgment, cost, expense, reasonable attorneys fees, cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Supplier's performance under this Order, howsoever arising, including, without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship or Service, or strict liability, unless caused by the sole negligence of the Indemnified Person. In the event Buyer should bring an action for enforcement of this indemnification provision, Supplier agrees that Buyer shall be entitled to be awarded its reasonable attorneys' fees and costs if Buyer prevails in such proceeding.
- (b) Supplier agrees, in any instance where any claims, suits, actions or legal proceedings, are brought against the Supplier and in any way affect Buyer's interests under this Order or otherwise, that:
 - (i) Supplier shall notify Buyer in a timely manner (not to exceed five (5) Business days) after learning of any actual or threatened claims, suits, actions or legal proceedings, and shall not at any time consummate any settlement without Buyer's prior written consent,
 - (ii) Without releasing any obligation, liability or undertaking of Supplier to indemnify Buyer hereunder, Buyer shall have the right to:

- (1) Cooperate in the defense of such, claim;
- (2) With permission of the court, intervene in any such action; and
- (3) Supersede Supplier in the defense of any such claim.

7. **Price Warranty:**

Supplier warrants that the prices for the Goods sold or Services provided to Buyer hereunder are not more than those currently extended to any other customer for the same or similar Goods or Services in similar quantities. In the event Supplier reduces its price for such Goods or Services during the term of this order, Supplier agrees to reduce the prices hereof correspondingly.

8. **Shipping Instructions:**

- (a)
 1. *Shipments Originating* - Unless otherwise specified in the Order, all shipments (a) which originate outside the United States and terminate in the United States shall be delivered DDU, United States port of entry; and (b) which originate and terminate outside the United States shall be delivered DDU at the point designated in the Order (or if there is no designation of any DDU point in the Order, DDU at Buyer's facility). Except as otherwise specified in the Order, the term "DDU" and the rights and obligations of Buyer and Supplier will be as defined by Incoterms 2000, the ICC Official Rules for the Interpretation of Trade Terms.
 2. *Manner of Shipment* - All shipments shall be shipped collect in accordance with Buyer's routing instructions, including use of Buyer's preferred carriers. Buyer shall separately provide buyer's routing instructions to Supplier or Buyer shall advise Supplier of the web site in which to obtain the routing instructions.
 3. *Risk of Loss/Insurance* - In every case, Buyer shall retain the risk of loss until goods are received at the location designated in the Order. Supplier shall insure the goods at full value under an "open cargo" insurance policy.
- (b) Unless otherwise specified, standard commercial preservation, packing and packaging is acceptable. Do not make any charges for packaging or boxing since Buyer will not allow such charges, unless agreed to in writing. Do not combine material for different receiving locations in the same container.
- (c) Exterior containers must be marked with the following: (i) address, including receiving well number, (ii) purchase order number, (iii) part number, (iv) prime contract number, if any, and, (v) any other special markings called for by this Order.
- (d) Include with each shipment of Goods a packing slip containing (i) the purchase order number, (ii) the item nomenclature/description; (iii) the item part number; (iv) the item U.S. National Stock Number (where applicable); (v) the item serial number (where applicable), (vi) the quantity of items, (vii) MSDS provided if required, and (viii) certificate of conformance.
- (e) The bill of lading must reference purchase order number, correct "ship to" address, and receiving well number, if applicable. An original of the bill of lading shall be retained by Supplier for one (1) year and provided to Buyer's Transportation Department on request.
- (f) Any invoices accompanying a shipment to be imported must meet requirements imposed by the Customs Service of the recipient country.

9. **Invoicing:**

- (a) Payment terms will be, Net 60 days. In the case of Goods, the payment term period will commence upon receipt of conforming Goods.
- (b) All invoices must be IN ENGLISH. Buyer shall advise Seller of specific information to be included on the invoice. Generally invoices for Goods shall include the following:
 - (i) Purchase order number.
 - (ii) Supplier invoice number and date.
 - (iii) Payment terms.
 - (iv) Purchase price and supporting detail as required by purchase order.
 - (v) Packing slip number.
 - (vi) Shipping date.
 - (vii) Name of Supplier.
 - (viii) Billing Name & Address.
 - (ix) "Ship To" address, receiving well number and point of contact.
 - (x) Delivery Terms (e.g., FOB, CIF, DDP).
 - (xi) Port of entry.
 - (xii) Complete description of the Goods, including name, part number, serial number, quantity, weights and measures and any other identifying markings.
 - (xiii) Country of origin (required for new parts only). This must be the country in which the Goods originally were manufactured.
 - (xiv) Any additional charges or credits (such as commissions, discounts, insurance, freight, packing, containers, coverings, rebates, drawbacks, subsidies, royalties, license fees, and/or the proceeds of any subsequent resale, disposal or use of the imported goods that accrue directly or indirectly to Supplier).

10 **Inspection of Records:**

If this is a time and material or cost-based Order or provides for the payment of any amount prior to final delivery of Goods hereunder based on Supplier's incurred cost, including, without limitation, progress or advance payments based on cost, Supplier agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this Order, shall at all reasonable times be subject to inspection by Buyer.

11. **Changes:**

- (a) Buyer may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of this Order, including, but not limited to, changes in whole or part and to any one or more of the following: (i) shipping or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance of the work, and (vi) Buyer-furnished property, facilities, equipment, materials, or Services. Supplier shall perform any changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications in the ordinary course of dealing shall not be considered changes within the meaning of this clause.
- (b) Buyer's engineering and technical personnel are not authorized to change the Goods or Services ordered or any provisions, drawings, designs, or specifications of this Order. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's purchasing department.
- (c) If any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the Order shall be modified in writing accordingly. Any claim by Supplier for adjustment, must be submitted in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's purchasing department not later than fifteen (15) calendar days after the date of receipt by Supplier of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Supplier's request; provided, however, that Buyer may in its discretion consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Order.
- (d) If the cost of property or material made obsolete or excess as a result of a change is included in Supplier's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property or material.
- (e) Notwithstanding any pending claims for adjustment submitted by Supplier, Supplier shall diligently proceed with the performance of this Order, as directed by Buyer, and nothing herein shall be construed as relieving Supplier of its obligations to perform, including without limitation the failure of the parties to agree upon Supplier's entitlement to, or the amount or nature of, any such adjustment.

12. **Compliance With Laws:**

- (a) Supplier shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, including those relating to pollution control, waste disposal, hazardous substances, and protection of the environment; and Supplier shall hold Buyer harmless from and against any and all liability due to the Supplier's failure to so comply.
- (b) Supplier shall promptly notify Buyer if Supplier is suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or if Supplier is listed or is proposed to be listed by the U.S. Government in any "denial orders," or is listed as a "blocked person," "specially designated national," or "specially designated terrorist" for U.S. export administration purposes. If a Supplier fails to so notify Buyer, then Supplier shall indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of its issuing any subcontracts to Supplier after such notice should have been given.
- (c) Export: Supplier understands that any technical data furnished in connection with this Order may be subject to export controls, and Supplier will not export such data, including disclosure of such data to foreign persons, unless Supplier has verified that such export will not violate U.S. export control laws, including restrictions

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contained in any export licenses. Use of the technical data provided to Supplier in connection with this Order is limited to the manufacture of the defense articles required by this Order only. Disclosure of the data to any other person --except subcontractors within the same country as the Supplier --is prohibited. The acquisition of any rights in the data by any foreign person is prohibited. Any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to this Order shall contain all the limitations of this paragraph. The Supplier and its subcontractors shall destroy or return to the person in the United States all of the technical data exported pursuant to the contract or order upon fulfillment of their terms. If Supplier has, export questions it may contact Buyer's export control department. Compliance with export laws and regulations does not relieve Supplier of its obligations under any other terms and conditions of this Order and shall not constitute a *force majeure* or give rise to an excusable delay hereunder.

13. **Delays:**

Supplier shall be liable for its failure or delay in making deliveries except when such failure or delay is due to a cause beyond the control and without the fault or negligence of Supplier, provided that Supplier gives to Buyer prompt notice in writing when it appears that such cause will result in failure or delay in making deliveries under this Order. In the event of any such failure or delay, Buyer shall have the right, at its option and without being under any liability to Supplier, to cancel this Order (in whole or part) by notice in writing to Supplier. Correspondingly, Buyer shall be excused for failure or delay in performance herein due to any cause beyond its control, including any cause of its customers.

14. **Termination for Default:**

- (a) Buyer may by written notice terminate the entire Order, or any part thereof, for default in the following circumstances:
 - (i) Supplier fails to deliver the Goods or perform the Services required by this Order within the time specified herein, or any extension thereof granted by Buyer in writing; or
 - (ii) Supplier fails to perform any of the other provisions of this Order or fails to make progress so as to endanger performance of this contract in accordance with its terms and Supplier does not cure or submit to Buyer a plan to cure such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying such failure; or
 - (iii) Supplier consents to the appointment of a receiver, trustee, liquidator, assignee, custodian or similar official of suppliers or of all or a substantial part of its property, or Supplier admits in writing its inability to pay its debts generally as they come due, or makes a general assignment for the benefit of creditors; or
 - (iv) Supplier files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in any bankruptcy or insolvency case or an answer admitting the material allegations of a petition filed against Supplier in any such case, or an order for relief is entered against Supplier in any such case, or Supplier seeks relief by voluntary petition, answer or consent, under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of the corporation, or providing for an agreement, composition, extension or adjustment with its creditors; or
 - (v) An order, judgment or decree is entered in any proceeding by any court appointing, without the consent of Supplier, a receiver, trustee, liquidator, assignee or similar official of Supplier or of all or any substantial part of its property, or sequestering all or any substantial part of the property of Supplier, and any such order, judgment or decree of appointment or sequestration remains in force undismissed, un-stayed or un-vacated for a period often (10) days after the date of entry thereof; or

- (vi) A petition against Supplier in any bankruptcy or insolvency case in effect is filed and is not withdrawn or dismissed within ten (10) days thereafter.
- (b) If this Order is entirely or partially terminated by Buyer under this section, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those so terminated, and Supplier shall be liable to Buyer for any and all re-procurement costs for such similar goods or services, including any price for such similar goods or services that is higher than this Order provided however, that Supplier shall continue the performance of this Order to the extent not terminated. Supplier shall not be liable for such additional costs if Supplier's failure to perform this Order:
- (i) arises out of causes beyond the control and without the fault or negligence of Supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
 - (ii) Is caused by the default of a vendor or subcontractor to Supplier, so long as such default arises out of causes beyond the control of both the Supplier and the vendor or subcontractor, and the subcontracted goods or services were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedule.

No cause shall constitute a basis for excusable delay unless Supplier has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

- (c) If this Order is entirely or partially terminated under this section, Buyer, in addition to any other rights, may require Supplier to:
- (i) Transfer title and deliver to Buyer in the manner and to the extent directed by Buyer any completed Goods and any partially completed Goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "contract materials") as the Supplier has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated; and/or
 - (ii) Protect and preserve property in the possession of Supplier in which Buyer has an interest.
- (d) Payment for completed Goods delivered or rendered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Supplier and Buyer. Buyer may withhold from amounts otherwise due Supplier for such completed Goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims.
- (e) If, after notice of termination under this section; it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."

15. **Termination for Convenience**

- (a) The performance of work under this Order may be terminated, in whole or in part, by Buyer for its convenience in accordance with this clause. Termination of work shall be effected by delivery to Supplier of a notice of termination

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specifying the extent to which performance of work under the Order is terminated, and the date upon which such termination becomes effective.

- (b) After receipt of a notice of termination and except as otherwise directed by Buyer, Supplier shall:
- (i) Stop work under the Order on the date and to the extent specified in the notice of termination.
 - (ii) Place no further orders or suborders for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Order that is not terminated.
 - (iii) Terminate all orders and suborders to the extent that they relate to the performance of any work terminated by the notice of termination.
 - (iv) Assign to Buyer, in the manner, and to the extent directed by Buyer all of the right, title and interest of Supplier under the Orders or subcontracts so terminated.
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of Buyer to the extent Buyer may require, which approval or ratification shall be final for all the purposes of this section;
- (c) After receipt of a notice of termination, Supplier shall submit to Buyer its termination claim promptly, but not later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by Buyer, upon request of Supplier made in writing within such six-month period or authorized extensions thereof. Settlement proposals for Supplier's termination claim must be on the forms prescribed by Buyer unless otherwise agreed to by Buyer and Supplier. Settlement proposals must be in the detail prescribed by such forms and must be accompanied by full and complete supporting documentation as required by Buyer.
- (d) Upon failure of Supplier to submit its termination claim within the time allowed, Buyer may, at its sole discretion, make payment to Supplier an amount determined by Buyer and based on the information available to it, to compensate Supplier in respect to the termination; however, if Buyer determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. If Buyer has made a determination under this paragraph, Buyer shall pay the Supplier the amount so determined. The parties agree that such determination shall be final and no claim for additional amounts shall be asserted.
- (e) Subject to the provisions hereof, Supplier and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Supplier by reason of the total or partial termination of work pursuant to this section, which amount or amounts may include a reasonable allowance for profit on work done and Buyer shall pay the agreed amount or amounts; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Order price as reduced by the amount of payments otherwise made and as further reduced by the Order price of work not terminated.
- (f) In the event of failure of Supplier and Buyer to agree as provided above upon the whole amount to be paid to Supplier by reason of the termination of work pursuant to this section, Buyer shall pay to Supplier the amounts determined by Buyer as follows, but without duplication of any amounts agreed upon in accordance with this Section:
- (i) For completed Goods or Services accepted by Buyer (or sold or acquired as provided above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price *for* such Goods or Services computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;
 - (ii) The total of the cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to Goods or Services paid or to be paid for above;
 - (iii) The cost of settling and paying claims arising out of the termination of work under suborders or orders as provided above, exclusive of the amounts paid or payable on account of supplies or materials delivered or Services furnished by the suborderer prior to the effective date of the Notice of Termination of work under this Order, which amount shall be included in the cost on account of which payment is made above; and

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- (iv) A fair and reasonable sum as profit on the above amount; provided, however, that if it appears that Supplier would have sustained a loss on the entire Order had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.
- (g) The total sum to be paid to Supplier shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the Order price of work not terminated. Except for normal spoilage and except to the extent that Buyer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Supplier the fair value as determined by Buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a purchaser.
- (h) The obligation of Buyer to make any payments Under this section shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to Supplier applicable to the terminated portion of this Order, (ii) any claim which Buyer may have against Supplier, in connection with this Order or any other transaction with Supplier, and (iii) the agreed price for, or the proceeds of sale of any materials, supplies, or other things retained by Supplier or sold, and not otherwise recovered by or credited to Buyer.
- (i) If the termination hereunder is partial, Supplier may file with Buyer a claim for an equitable adjustment in the price or prices specified in the Order for the work in connection with the continued portion not terminated by the notice of termination, and an appropriate equitable adjustment under this section must be asserted within forty-five (45) days from the effective date of the termination notice, unless an extension is granted in writing by Buyer.
- (j) Buyer may, under such terms and conditions as prescribed, make partial payments and payments on account against costs incurred by Supplier in respect to the terminated portion of the Order, whenever in the opinion of Buyer the aggregate of such payments shall be within the amount to which Supplier will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this section, such excess shall be payable by Supplier to Buyer upon demand, together with interest computed at the highest rate permitted by Connecticut law for the period from the date such excess payment is received by Supplier to the date on which such excess is repaid; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Supplier's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by Buyer by reason of the circumstances.
- (k) Unless otherwise provided for in this Order, or by applicable statute, Supplier shall (from the effective date of termination until the expiration of three years after final settlement under this Order) preserve and make available, without any direct charge, to Buyer and to Buyer's customer at all reasonable times at the office of Supplier, all his books, records, documents, and other evidence bearing on the costs and expenses of Supplier under this Order and relating to the work terminated hereunder, or, to the extent approved by Buyer, photographs, microphotographs, or other authentic reproductions thereof.

16. **Stop-Work Order:**

- (a) Buyer may by written order to Supplier, require, Supplier to stop all, or any part, of the work called for by this Purchase Order for a period of 90 days after the stop-work order is delivered to Supplier, and for any further period to which the parties may agree. Upon receipt of the stop-work order, Supplier shall immediately comply with its terms and take all reasonable steps to minimize the need to incur of costs allocable to the work covered by the Order during the period of work stoppage.
- (b) If a stop-work order issued under this section is canceled or the period of the stop-work order or any extension thereof expires, Supplier shall contact Buyer for further direction and shall not resume work unless directed to do so. Buyer shall make an equitable adjustment in the delivery schedule or purchase order price, or both in accordance with the changes section of this Order and the purchase order shall be modified, in writing, accordingly, if

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- (i) The stop-work order results in an increase in the time required for, or in Supplier's cost properly allocable to, the performance of any part of this Order; and
- (ii) Supplier submits a claim for the adjustment under the Changes section of this Order.

17. **Duty to Proceed:**

Supplier shall proceed diligently with the performance of this order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement provided for by the terms of this Order shall excuse the Supplier from proceeding.

18. **Partial Invalidity/Unenforceability:**

If in any instance any provision of this Order shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.

19. **Survival:**

Supplier agrees that the Warranty, Remedies for Breach of Warranty or Delivery, Indemnification, Inspection of Records, Intellectual Property Rights, Cumulative Remedies, Offset, Patent Infringement and Protection of Proprietary Information provisions of this Order and all provisions which relate to claims which may be made by Buyer under this Order shall survive and continue in full force and effect upon the termination of this Order, unless otherwise agreed to in writing by a duly authorized representative of the Supplier and an attorney in Buyer's Legal Department.

20. **No Waiver:**

Buyer's failure to seek a remedy for any breach by Supplier or, Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, or privileges or any other terms, conditions, or privileges whether of the same or similar type.

21. **Attorney Fees:**

If Buyer brings an action or asserts a counterclaim for enforcement of the terms and conditions of this Order, Supplier agrees that Buyer shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement or counterclaim proceedings.

22. **Applicable Law and Forum:**

- (a) Unless otherwise expressly agreed to in writing this Order shall be interpreted in accordance with the plain English meaning of its terms and the laws of the State of Ohio, USA, without regard to conflicts of law principles, thereof shall govern the construction. Services shall be deemed to be goods for the purposes of this paragraph (i.e., the application of governing law). Trade terms and usage of industry shall be taken into account understanding the intent of the parties in relation hereto. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this Order in the appropriate court in the jurisdiction described in (a) above, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process.

- (b) Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described in (a) above, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. It Buyer and Supplier mutually agree to participate in alternative dispute resolution; Supplier agrees that all alternative dispute resolution proceedings shall take place in Connecticut.
- (c) The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

23. **Cumulative Remedies:**

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

24. **Interpretations and Order of Precedence:**

- (a) Any inconsistency or ambiguity in this Order shall be resolved by giving precedence in the following order:
 - 1. Any written changes to terms of the Order or any long term agreement incorporated by reference in the Order, as mutually agreed to in writing in any Order (however, if such changes would alter the liability or warranty aspects of these terms, then such proposed changes will be null and void unless their acceptance is signed by an attorney in Buyer's Legal Department);
 - 2. Specifications, work statements and drawings incorporated into the Order;
 - 3. Terms entered on an Order by Buyer that are specific to that Order and are not incorporated in the standard pre-printed Order terms and not incorporated by reference in the Order;
 - 4. Long term agreement attachments;
 - 5. Other terms contained in any long term agreement or other specific terms agreement agreed to by both parties in writing and incorporated (including incorporation by reference) in the Order or supplement;
 - 6. These Terms and Conditions of Purchase; and
 - 7. Other terms, not described in subsections 1-6 above, incorporated in this Order, including terms contained in documents incorporated by reference.
- (b) Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions refer.

25. **Electrostatic Discharge Control Requirements:**

Suppliers of electrical and electronic parts, assemblies and equipment, hereinafter referred to as "Parts" shall determine if any Parts supplied to buyer are electrostatic discharge (ESD) sensitive and if so, shall apply the following conditions: (i) Suppliers of ESD sensitive electrical and electronic Parts shall design, manufacture, test, and repair these Parts using good commercial ESD control practices when on site at Buyer or in the Supplier facility; (ii) electrical and electronic Parts supplied to Buyer

ATC Aerospace a Division of Argo Turboserve Corporation

that are susceptible to ESD damage as delivered shall be properly handled and packaged to prevent ESD damage; and (iii) packages containing electrostatic discharge sensitive (ESDS) parts shall be marked with an appropriate caution label.

26. **Assignments and Setoff:**

- (a) Upon written notice to the Supplier, Buyer may assign this Order or any interest hereunder, without recourse, to any subsidiary or affiliate of Buyer or to any entity that acquires Buyer or substantially all of its assets, and Supplier hereby consents to any such assignment without further action by Buyer or Supplier.
- (b) Performance of this Order shall not be assigned: by the Supplier in whole or in part without the prior written consent of Buyer. Any assignment by Supplier in whole or in part without the prior written consent of Buyer shall be null and void, shall be deemed a material breach of this Order, and Supplier in whole or in part without the prior written consent of Buyer shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder.
- (c) Claims for money due or to become due to Supplier from Buyer arising out of this Order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this Order and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Supplier, a certified copy of the instrument of assignment, and suitable documentary evidence of Supplier's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.
- (d) All claims for money due or to become due from Buyer arising out of Supplier's performance under this Order or any (other transaction with Supplier shall be subject to deduction or setoff by Buyer).

27. **Intellectual Property Rights:**

- (a) "Intellectual Property" means all patents, copyrights, mask works, trademarks, trade secrets and other rights and information of a similar nature worldwide to the extent that such rights or information are created or made possible by Supplier alone (or acting with Buyer or others) and result from the Supplier's performance under this Order or any Goods or Services provided to Buyer. Such information includes, without limitation, designs, unique processes, drawings, prints, unique specifications, reports, data, and other technical information, regardless of form, and all unique equipment, tools, gauges, patterns, process sheets or work instructions related to such Goods or Services.
- (b) Buyer is licensed to copy, embed and use all software provided under this Order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in this Order, or in a prior written order directed to the software provided hereunder, Buyer's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable copyright laws and regulations, irrespective of any other license agreement, including, but not limited to, any license agreement packaged with such software.
- (c) Supplier shall promptly disclose in writing to Buyer all Intellectual Property produced or first reduced to practice in the performance of this Order. To the extent permissible by law, all deliverables shall be deemed works made for hire for Buyer. In addition, Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably assigns to Buyer all right, title and interest to all Intellectual Property, and agrees to do all things reasonably necessary to enable Buyer to secure United States patents, copyrights and any other rights relating to Intellectual Property, including the execution of a specific assignment of title of any Intellectual Property to Buyer. Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably waives all "moral rights", all rights under the Visual Artists Rights Act, all rights of privacy and publicity, and the like, in all materials provided to Buyer. Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of this Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. § 101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Supplier, Warranting that it has the right to do so, hereby assigns all right, title, and interest it has to any copyright in

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such works and will execute, or cause to be executed at Buyer's expense, any documents' required to establish Buyer's ownership of such copyright.

- (d) To any extent Buyer does not otherwise have the right(s) to do so, Supplier, on behalf of itself, its employees and any others used by Supplier, hereby grants to Buyer worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable licenses (with rights to grant sublicenses) to make, copy, distribute, display, perform, adapt and use, in any and all media, now known or later developed, all materials and other information which Supplier provides or has provided to Buyer either during the term of or prior to the effective date of this Order.
- (e) Supplier hereby represents and warrants to Buyer that all materials, devices, Services and other information that Supplier uses, copies or adapts hereunder are created originally by Supplier and/or are licensed lawfully to Supplier. The tangible and intangible work product developed under this Order, whether or not delivered under this Order, including, but not limited to, all analysis, recommendations, reports, and memoranda, shall become the property of Buyer.
- (f) Supplier hereby represents and warrants to Buyer that all materials, devices, Services and other information that Supplier uses, copies or adapts hereunder are created originally by Supplier and/or are licensed lawfully to Supplier. The tangible and intangible work product developed under this Order, whether or not delivered under this Order, including, but not limited to, all analyses, recommendations, reports, and memoranda, shall become the property of Buyer.

28. **Infringement Indemnity:**

- (a) For goods or services delivered hereunder, Supplier shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any infringement claim, suit or action, including proceeding under 28 U.S.C. § 1498, alleging that manufacture, use, or sale infringes any patent, trademark, copyright, semiconductor chip product mask work right other right; except, however, that when such alleged infringement arises as a necessary consequence, of Supplier's compliance with specification or designs furnished by Buyer which describe that aspect of the Goods or Services on which such alleged infringement is based. In such event, Buyer shall save Supplier' harmless there from, but this exception shall not apply if the subject matter giving rise to the claim for infringement either: (i) was derived from, *or* selected by Supplier, or (ii) relates to materials or compositions, or processes relating to materials or compositions.
- (b) The party against whom such infringement claim is made, or such suit or action is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action as such is commenced against the other party. Insofar as its interests are affected the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.
- (c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supercede Supplier in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event supplier shall be released from any obligation arising from such infringement claim, suit or action under this infringement indemnity section. Further, Supplier, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.