

## ULTRA ELECTRONICS MARITIME SYSTEMS STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1. DEFINITIONS

- a) "Buyer" means Ultra Electronics Maritime Systems, a division of Ultra Electronics Canada Defence Inc. with offices at 40 Atlantic Street, Dartmouth, NS B2Y 4N2 Canada.
- b) "Seller" shall mean the party identified on the face of the purchase order with whom Buyer is contracting.

### 2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a) A purchase order, any attachments and documents generated by the Buyer that accompany the purchase order, and these terms and conditions, together constitute the complete and exclusive statement of the terms of the agreement between Buyer and Seller (the "Order"), and such Order supersedes all prior contemporaneous written or oral representations, understandings and communications thereto.
- b) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgement hereof are hereby objected to by UEMS and have no effect unless expressly accepted in writing by UEMS, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.
- c) Seller's acknowledgement of this Order, acceptance of payment (either partial or full), or commencement of performance shall constitute Seller's unqualified acceptance of this Order, subject to these terms and conditions.
- d) Modifications or additions to this Order, to be effective, must be made in writing and be signed by Buyer's authorized representative.
- e) In the event this Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing.

### 3. ORDER OF PRECEDENCE

- a) In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following, in descending order of preference:
  - i. Typed provisions set forth on the face of the purchase order;
  - ii. Documents incorporated by reference by the Buyer on the face page(s) of the purchase order;
  - iii. These standard terms and conditions;
  - iv. A non-disclosure agreement executed by the parties;
  - v. Buyer's statement of work; and
  - vi. Buyer's specifications attached hereto or incorporated by reference.
- b) Buyer's specifications shall prevail over those of the United States or Canadian Government, and all of the foregoing shall prevail over specifications of Seller.
- c) In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

### 4. SELLER'S AUTHORIZATION AND COMPLIANCE WITH LAWS

Seller warrants that:

- a) it has been duly authorized to operate and do business in the country or countries in which the work specified in this Order is to be performed;
- b) that it has obtained, at no cost to the Buyer or its customer(s), all necessary and required licenses and permits required in connection with this Order; and,
- c) that it will fully comply with all laws, orders, statutes, rules, decrees, regulations, ordinances and labor standards of such country or countries during the performance of this Order.

Seller shall be liable for, and save Buyer harmless from, any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties.

### 5. EXPORT CONTROL

Seller agrees to obey all export control restrictions with respect to the performance of services and/or the manufacture of goods pursuant to this Order, including, but not limited to, the restrictions of the U.S. International Traffic in Arms Regulations (ITAR), the U.S. Department of Commerce Export Administration Regulations (EAR), and all Canadian export regulations, including but not limited to, the Canadian Controlled Goods Directorate regulations. Seller further agrees that all classified information and/or material (including classified waste) generated by, or put at the disposal of, the Seller will be stored, handled, transmitted, safeguarded and destroyed in accordance with the following: (i) for Sellers in Canada, such information shall be handled in accordance with the Canadian Industrial Securities Manual (ISM), including all amendments and supplements thereto; and (ii) for Sellers located in countries other than Canada, such information shall be handled in accordance with its country's national industrial security policy but in any event in accordance with requirements at least as restrictive as those in the Canadian Industrial Securities Manual (ISM), including all amendments and supplements thereto. Compliance with such export control restrictions shall include, but not be limited to, the Seller obtaining any and all export license(s), manufacturing license agreements, technical assistance agreements, or other export control license/agreement necessary for the performance of its obligations under the Order. Seller shall indemnify and hold harmless Buyer from any and all violations of such export control restrictions with respect to such performance of services and/or the manufacture of goods.

### 6. GOVERNING LAW

The Order and any subsequent changes thereto shall be construed and enforced in accordance with the laws of the Province of Nova Scotia, excluding its choice of law provisions.

### 7. WARRANTIES

- a) Seller expressly warrants that all goods delivered and services performed pursuant to the Order will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples, and descriptions, and any other requirements of this Order, and, to the extent such goods are not manufactured pursuant to detailed designs furnished by Buyer, that all goods will be free from defects in design, are merchantable, fit and suitable for the intended purpose or use, and are new and unused. The warranty shall begin upon final acceptance by Buyer or Buyer's customer, as the case may be, and extend for a period of two years from such acceptance or the manufacturer's warranty period, whichever is longer.

- b) If any non-conformity with goods appears within that time, Seller, at Buyer's option, shall promptly repair or replace the goods or re-perform the services all at Seller's risk and expense. Transportation of replacement goods, return of non-conforming goods, and/or repeat performance of services shall be at Seller's expense. In addition to Buyer's right under *Article 21 PENALTIES*, if repair or replacement of goods and/or re-performance of services is not timely, Buyer may elect to return the nonconforming goods or repair or replace goods or re-procure the goods at Seller's expense. If defective goods are replaced by Seller pursuant to this provision hereunder, the warranty terms as defined herein will be renewed for such replacement articles. If Buyer does not require correction or replacement of nonconforming or defective goods, Seller shall repay such portion of Order price or such additional amount as is equitable under the circumstances.
- c) Acceptance or inspection of goods by Buyer or payment therefore shall not relieve Seller of its responsibilities hereunder.
- d) The warranties of Seller, together with its service warranties and guarantees, if any, shall run to Buyer, its successors, assigns and customers.
- e) Seller shall be liable for, and save Buyer harmless from, any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties.

#### **8. CHANGES**

- a) Buyer may, in writing, from time to time, order work suspension or make changes in quantities, drawings, designs, form, fit, function, specifications, services, place of delivery, or delivery schedules, methods of shipment and packaging, and property furnished by Buyer. If any such change causes an increase or decrease in the price of this Order, or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within ten days after the change or suspension is ordered. The parties shall negotiate an equitable adjustment and the Order shall be amended in writing accordingly. However, nothing in this clause shall excuse Seller from proceeding immediately with the Order as changed pending resolution of Seller's claim. Whether made pursuant to this clause, or by mutual agreement, changes requested by the Buyer shall not be binding upon the Buyer except when confirmed in writing by an authorized representative of the Buyer.
- b) Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in writing and signed by Buyer's authorized representative and which states it constitutes an amendment or change to this Order.
- c) Seller shall not make any changes to form, fit, or function of goods or make any changes to any manufacturing processes whatsoever for the duration of the Order without prior written approval from the Buyer.

#### **9. INFRINGEMENT INDEMNITY**

- a) Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, goods, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark, or other proprietary rights. Seller shall indemnify and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising from claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend. Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially same form, fit and function so as to remove the source of infringement,

and shall extend this provision thereto. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said item.

- b) Any invention or intellectual property first made or conceived by Seller in the performance of this Order or which is derived from or based on the use of information supplied by Buyer or which is paid for by Buyer shall be considered to be the property of Buyer; and Seller shall execute any documents necessary to perfect Buyer's title thereto.

#### **10. SELLER'S DATA**

Seller agrees that any documents, such as prints or any printed or written material containing instructions, data, or information, furnished to Buyer in connection with this Order, shall be free from confidential, proprietary, or restrictive use marking, other than statutory patent, copyright, or any government or security notices. Buyer, its customers, agents or assigns, may duplicate or use such documents in connection with further manufacture, use, or disposition of the material furnished under this Order, and may remove, obliterate, or ignore any marking on such documents not authorized by this clause.

#### **11. PROPERTY RIGHTS**

All goods, materials, drawings, tools, jigs, dies, fixtures, and other items furnished by Buyer or Buyer's Customers to Seller or paid for by Buyer to perform this Order, shall be and remain the property of Buyer or Buyer's Customer as the case may be. Seller shall bear the risk of loss of, or damage to, such Buyer's property or Buyer's Customer's property, as applicable, except for normal wear and tear, and such property shall not be used by Seller for any purpose other than the performance of this Order unless Buyer otherwise consents in writing, nor shall Seller substitute any other material therefore. Upon completion of work and use of such property, and/or upon the written request of Buyer, such property shall be immediately released to Buyer, or delivered to Buyer by Seller in accordance with Buyer's shipping instructions. In the event Seller fails to return such property to Buyer, Buyer shall have the right, upon reasonable notice to Seller, to enter Seller's premises at any time and remove any such Buyer's Property and Seller's records thereto without liability for trespass or damages of any sort.

#### **12. PROPRIETARY INFORMATION, DUPLICATION, AND DISCLOSURE**

- a) Seller agrees that any information disclosed by Buyer to Seller for the purpose of this Order, whether identified by Buyer as proprietary or not, shall be held in confidence and shall be used by Seller only in performance of this Order. Upon completion or termination of this Order, Seller shall return all such information and items to Buyer, or make such other disposition thereof as may be directed or approved by Buyer.
- b) No item furnished under this Order, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by Buyer, shall be duplicated or furnished to any third party without prior written consent of Buyer.
- c) Seller agrees to obtain appropriate binding agreements with all of its personnel and any other person or entity performing work on behalf of Seller relating to performance of this Order, including any subcontractors, (hereinafter "Subcontractors") specifying that such Subcontractors shall assume the same obligations and responsibilities towards Seller as outlined herein.

#### **13. PUBLICITY**

Unless Buyer gives prior written consent to Seller, Seller shall not, in any manner, advertise, publish, distribute, or use any information developed under or about the subject matter of this Order, or use, reproduce or imitate for any purpose whatsoever any filed or registered trademarks or tradenames of Buyer in Seller's advertising or promotional materials or for

creating any website content. No news release in any way relating to Buyer concerning the Order shall be made by Seller to any news media or the general public without prior approval of the Buyer. Seller shall not disclose the existence of this Order to any other party without the prior written consent of the Buyer.

#### **14. ASSIGNMENTS AND SUBCONTRACTING**

- a) Seller shall not assign any of its rights or in any manner transfer this Order, or delegate any of its duties obligations due or to become due under this Order, including the right to payment, without having received prior written authorization from Buyer. Any purported assignment by the Seller without such consent shall be void.
- b) Buyer may assign this Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Buyer's customer. Buyer shall have the right at any time to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries pursuant to this Order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates
- c) Seller shall not subcontract all or substantially all work on any of the goods to be supplied or services to be performed under this Order, without prior written approval of Buyer. This provision shall not apply to purchases of standard commercial articles, or raw materials, including castings, forgings, and rough welded structures on which Seller will perform further work.
- d) Upon request by Buyer, Seller shall provide written evidence to Buyer verifying that subcontractors have been paid.
- e) Seller will keep Buyer's premises free and clear of all mechanics' or builders' liens. Buyer shall have the right to order Seller, in writing, to discharge forthwith any liens of whatever type placed on Buyer's premises or work being performed on Buyer's premises or goods being supplied under this Order, whether or not such liens constitute valid claims and Seller shall assume the cost of discharging such liens. Further, Buyer shall have the right at any time to pay or to discharge any liens placed on Buyer's premises for work being performed at Buyer's premises or goods supplied under this Order, whether or not such liens constitute valid claims and to deduct the costs of discharging such liens from the amount due to the Seller.

#### **15. TERMINATION FOR CONVENIENCE**

Buyer may, by written notice to the Seller, terminate the whole or part of this Order at its convenience upon thirty (30) days written notice. Seller shall not be excused from the performance of any portions of the Order not terminated. Buyer shall pay Seller for all work completed on the basis of the contract price, together with Seller's actual, reasonable, and substantiated costs (the "Termination Costs"), and Buyer shall be entitled to take immediate possession of all work so performed. In no event shall such Termination Costs include any consequential, indirect, or punitive damages, the costs of removal and reinstallation of items, loss of goodwill, loss of third party revenues or profits, loss of use, injury to persons or property. Seller shall provide Buyer with any claims for Termination Costs within a reasonable time period after Order termination but in any event no later than thirty (30) days after the effective date of such termination. Further, upon such termination, Seller agrees that any and all rights, title, and interest in and to any intellectual property developed in accordance with Article 9(b) herein will be immediately vested in Buyer, and any and all limitations on the use thereof by Buyer shall be immediately deemed null and void.

#### **16. TERMINATION FOR DEFAULT**

- a) Buyer may, subject to the provisions of paragraph *Article 18 Force Majeure*, by written notice of default to Seller, terminate the whole or part of this Order in any one of the

following circumstances: (i) if Seller fails to make delivery of the goods or to perform the services within the time specified herein or any extension or modification thereof by change order or amendment; or (ii) if Seller fails to perform any of the other provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms; or (iii) if Seller fails to replace or correct defective articles in accordance with the provision of *Article 8 WARRANTIES* and in any of these circumstances specified does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure. In the event that this Order provides for the furnishing of items in more than one lot, the entire Order, including all lots, may be terminated for default upon Seller's failure as described above in connection with any one lot or part thereof.

- b) In the event Buyer terminates this Order in whole or in part as provided in paragraph (a) of this clause, Buyer may procure, upon such terms and in such manner as it may deem appropriate, goods or services similar to those so terminated, and the Seller shall be liable to Buyer for the costs of such goods or services plus any excess costs reasonably incurred for such similar goods or services; provided, that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this clause.
- c) If this Order is terminated as provided in paragraph (a) of this clause, Buyer, in addition to any other rights provided in this clause, may require Seller to transfer title to and deliver to Buyer, in the manner and to the extent directed by Buyer, (i) any completed goods, and (ii) such partially completed goods and materials, parts, tools, dies, jugs, fixtures, plans, drawings, information, and contract rights (hereinafter called "Manufacturing Materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Order price. Payment for Manufacturing Materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Buyer and Seller.
- d) If, after notice of termination of this Order under the provisions of paragraph (a) of this clause, it is determined by Buyer that the failure to perform this Order is due to causes beyond the control of and without fault or negligence of Seller, and despite the exercise of utmost diligence by Seller or its subcontractor(s) pursuant to the provisions of *Article 18 Force Majeure* of these terms and conditions, such notice of default shall be deemed to have been issued pursuant to the clause of this Order entitled "Termination for Convenience", and the rights and obligations of the parties hereto shall, in such event, be governed by such clause.
- e) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

#### **17. TERMINATION ON ACCOUNT OF INSOLVENCY**

The Buyer may terminate this Order without liability in the event Seller becomes insolvent, makes an assignment for the benefit of creditors, or if a receiver is appointed for the Seller on account of its insolvency or is unable to pay its debts in the ordinary course of business. Buyer may treat such termination as default by Seller and in such event, the rights and obligations of the parties hereto shall be governed by *Article 16 TERMINATION FOR DEFAULT*.

#### **18. FORCE MAJEURE**

Except with respect to defaults of Seller's subcontractors, Seller shall not be liable for any excess costs, if the failure to perform the order arises out of causes beyond the control of and without the fault or negligence of, and despite the exercise of utmost diligence by Seller,

provided Seller gives Buyer written notice of such causes within twenty days of the occurrence thereof and provided Buyer agrees that such cause constitutes a Force Majeure event. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes; but in every case the failure to perform must be beyond the control and without the fault of negligence of, and despite and exercise of utmost diligence by, Seller. If the failure to perform is caused by default of Seller's subcontractor, and if such default arises out of cause beyond the control of both Seller and its subcontractor, and without the fault or negligence of, and despite the exercise of utmost diligence by either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

#### **19. COMPLIANCE WITH DELIVERY SCHEDULE**

- a) Time shall be of the essence hereunder.
- b) Shipment and delivery of goods or rendering of services must be effected within the time stated on the face of the Order or as may be otherwise mutually agreed in writing.
- c) Unless Buyer agrees in writing, deliveries of goods more than ten business days prior to the date specified in the Order may be received by Buyer and payment postponed until the date payment would have been due, or Buyer is entitled to refuse to accept such delivery without liability for any loss, damage or expense incurred or sustained by Seller, including costs of returning, storing or reshipping articles.
- d) Unless Buyer otherwise agrees in writing, deliveries of goods after the date specified in the Order are not permitted. Seller agrees that in the event deliveries of the articles or performance of the services called for in the Order are not made within the time specified in the Order or any authorized extension to the Order, and Buyer requests in writing that Seller perform overtime, weekend or holiday work, or establish additional shifts of personnel to perform the work, Seller shall comply with said requests by Buyer or take such other action as is considered appropriate by Buyer to regain current delivery schedule status, at no change to the prices as established in the Order. Notwithstanding the foregoing, and unless otherwise agreed by Buyer in writing, Buyer reserves the right, at its sole discretion, to charge penalties in accordance with *Article 21 Penalties* hereunder and to return such late deliveries at Seller's cost and/or deduct any and all shipping costs and other related fees incurred by Seller for both the return and reshipment of the units, from Seller's account and/or terminate this order for default. Buyer shall not have the right to request such overtime work without additional compensation to Seller, if Seller's failure to meet the established delivery schedule provided for herein is due to causes beyond the control and without the fault or negligence of Seller as defined in clause *Article 18 Force Majeure*.
- e) The rights afforded to Buyer in the foregoing sentences shall not be exclusive and are in addition to any other rights provided by law or under this Order.
- f) Seller agrees to notify Buyer immediately if, at any time, it appears that the delivery schedule set forth herein may not be met. Such notification shall include the reasons for any possible delays, and steps being taken to remedy any such problems. Further, this notification shall be in addition to any reporting requirements specified elsewhere in the Order. The requirements for notification set forth above are not to be construed as a waiver of the delivery schedule set forth in this Order and shall not prejudice Buyer's right under any other clause of this Order at law or in equity.

#### **20. TITLE AND RISK**

Title to and risk for goods shall pass to Buyer upon delivery.

#### **21. PENALTIES**

- a) The obligation to deliver the goods and to perform the services in accordance with the delivery schedule in any Order(s) issued by Buyer is a material term of any Order and is an essential and primary obligation of the Seller to be performed. The parties recognize that in the event of delay of the delivery of goods by Seller, Buyer may suffer harm, and that any such harm arising by reason of Seller's delay would be difficult to determine accurately. In the event that the Seller may consider that the delivery dates may not be achieved for any reason whatsoever, then the Seller's obligations shall be in accordance with Article 19(f) hereof. Notwithstanding the foregoing, in the event of any delay in the delivery of the goods or performance of services with respect to the Order schedule, unless said schedule has been amended by mutual agreement of the parties, Buyer, at its sole discretion, shall be entitled to Seller's payment to Buyer of fixed, agreed and liquidated damages as follows:
  - 0.5% of the value of the delayed Product for each full calendar week of delay for the first two weeks of delay,
  - 1% of the value of the delayed Product for each full calendar week of delay thereafter.
- b) Buyer shall also be entitled to suspend the payment to Seller for any rejected delivery pursuant to *Article 23.0 Inspection*.
- c) The maximum value, per instance of late delivery, of the liquidated damages is limited to 10% of the value of the delayed Product.
- d) The liquidated damages will be invoiced separately by Buyer to Seller. In such invoice, Buyer shall cite all the relevant circumstances, and the deliveries involved that has given rise to claim for liquidated damages.
- e) Notwithstanding the aforementioned provisions, in case the cause of the delay shall persist for six weeks or more, and the parties in this agreement have been unable to reach agreement within this period on a revision of the delivery schedule, Buyer shall be entitled, after written notice to Seller, to terminate any Order in accordance with the provisions of *Article 16 Termination for Default*.
- f) Notwithstanding the rights of Buyer due to Seller's delivery delays, it is agreed between the parties that the payment of liquidated damages shall not relieve Seller from its other contractual obligations to Buyer.
- g) The parties shall not be responsible for penalties due to any delay due to reasons of Force Majeure as defined herein.

#### **22. QUALITY CONTROL**

Seller shall provide and maintain a quality control system to an industry recognized Quality Standard, in compliance with any other specific quality requirements identified in this Order, and approved by Buyer. Records of all quality control inspection work or other inspection or test performed by Seller on the goods shall be kept complete and shall be available to Buyer and its customers upon written request, unless previously identified as a deliverable on the face of the Order.

#### **23. INSPECTION**

- a) All material and workmanship shall be subject to inspection and test at all reasonable times and places, by Buyer and Buyer's customer before, during, and after performance and delivery. If goods furnished and/or services performed hereunder do not conform to the requirements of this Order, Buyer shall have the right, without prior consent and at Buyer's option, to reject and return same at Seller's expense for full credit or require the replacement or correction of the same at Seller's expense, or Buyer may keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or re-inspection by Buyer shall be at

Seller's expense. All goods also may be subject to further final inspection and acceptance or rejection at Buyer's plant, Seller's plant, or site of installation, notwithstanding any payments, previous source inspection, or acceptance.

- b) If any inspection or test is made on Seller's or its subcontractors' premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors or representatives of Buyer's customers. The foregoing are supplementary to and not in lieu of the provisions of (a) above, and shall in no way relieve Seller of its obligation to furnish all goods and perform all services in strict accordance with this Order and which are free from defects.
- c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Order

#### **24. JIGS AND FIXTURES**

In the manufacture of goods to be supplied hereunder, Seller shall use jigs, fixtures, and/or other devices and appliances in all processes that are conducive to the manufacture of uniform goods. Seller agrees that whenever Buyer determines that such devices or appliances are incorrect, worn, damaged, or defective to such an extent as to adversely affect basic interchangeability of the item manufactured, Seller shall not thereafter use the same in its incorrect, worn, damaged, or defective form and shall repair or replace such devices or appliances.

#### **25. DOCUMENT LANGUAGE**

All documentation furnished under this Order, unless otherwise specified in this Order, will be written in the English language. In the event of any inconsistency between any terms of this Order and any translation thereof into another language, the English language meaning shall control and the English language shall govern any question with respect to interpretation. All measurements applicable to the work performed herein will be in accordance with the Canadian system of measurement or the system of measurement prescribed in the Order.

#### **26. PRICES**

Seller warrants that the price(s) charged for the goods and/or services specified in this Order do not exceed the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to any Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller further agrees that in the event of an announced price reduction prior to complete shipment of goods or performance of services, said price reduction shall be passed on to Buyer for goods remaining to be shipped or services still to be performed.

#### **27. PAYMENTS**

Seller's invoices must be itemized to show goods delivered and/or services rendered. Errors or omissions in invoices or delays in receiving proper invoices will be considered just cause for withholding payment. Payments under this Order shall be made in Canadian currency, unless otherwise specified elsewhere in this Order. Following receipt of Seller's proper invoices for goods delivered and/or services rendered, and provided such goods and/or services have been accepted by Buyer, Buyer shall pay Seller upon net 45 days from receipt of said invoice, unless otherwise stated on the face of the purchase order. Buyer reserves the right to withhold payment for goods delivered and/or services rendered in advance of Buyer's stated schedule until the date specified on Buyer's Order. Without limiting Buyer's other remedies, if data, reports, or other deliverables are not furnished when scheduled, Buyer may withhold remaining payments (or such portion thereof as Buyer may deem equitable) until such data, reports, or other deliverables are furnished. Governmental duties, taxes, other levies, when

applicable, shall be itemized as separate items on Seller's invoices. Any and all tax exemption certificates shall be acceptable by Seller.

#### **28. DISPUTES**

All disputes, claims, or controversies arising under or related to this Order or the breach thereof which are not amicably resolved by mutual agreement within a reasonable time shall be settled by arbitration. The arbitration shall be held in Halifax, Nova Scotia and shall be conducted in accordance with the rules of the *Commercial Arbitration Act* of Nova Scotia in effect at the time the proceedings begin. The arbitration panel shall consist of three arbitrators, one appointed by each party and the third appointed by the first two members. The arbitration tribunal shall resolve the questions submitted, award the relief to which each party may be entitled, and allocate the costs of arbitration. Notwithstanding the foregoing, each party shall bear the burden of its own counsel fees incurred in connection with any arbitration proceedings under this Order. The decision of the arbitrators shall be final, binding on the parties, not subject to appeal, and enforceable by any court having jurisdiction over the necessary party or its assets. Pending resolution or settlement of any dispute arising under this Order, Seller will proceed diligently with the performance of this Order or any change hereto in accordance with the decision and instructions of Buyer.

#### **29. TAXES AND CUSTOM CHARGES**

Except as may be otherwise provided in the Order, the Order price is inclusive of all taxes, assessments, fees, licenses, customs charges and other compulsory governmental charges, applicable to the Seller and its subcontractors. If the Seller is not required to pay any of the foregoing taxes or other charges or obtains a refund or drawback thereof, the Order price shall be correspondingly decreased. The Seller shall promptly notify the Buyer of all matters pertaining to taxes or other charges which reasonably may be expected to result in a decrease in the Order price.

#### **30. PRIORITIES**

If Seller procures any materials or products in the U.S.A. directly, by subcontract, or through other agents for the performance of this Order, and these materials or products are certified under the U.S. Defence Materials System Regulations, then Seller and its subcontractor or other agents shall follow as required, the provisions of the system and all other applicable regulations under which priorities and allocations are defined.

#### **31. INSURANCE AND INDEMNITY AGAINST CLAIMS**

- a) Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Order. Seller shall also maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Order or if none specified, such amount as will protect Seller (and its subcontractor) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes including the Occupational Safety and Health Act.
- b) Seller shall, without limitation as to time, indemnify and save Buyer harmless from all claims which may be asserted against property covered hereunder, including, without limitation, mechanic's liens or claims arising under Workers' Compensation or Occupational Disease laws and from all claims for injury to persons or damage to property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

- c) Upon request by Buyer, Seller will provide Buyer with proof of insurance acceptable to Buyer.

### **32. PACKING AND SHIPMENT**

- a) Unless otherwise specified, all goods are to be packed in accordance with good commercial practice.
- b) Unless otherwise specified, a complete packing list shall be enclosed with each shipment. Sellers located in Canada shall send two copies of accounting invoices to Buyer. Sellers located in countries other than Canada shall send four copies of certified Customs Invoices to Buyer.
- c) A "blanket" or "original" NAFTA certificate of origin signed by Seller's authorized individual must be forwarded prior to the release of shipment. Seller will be held financially responsible for all penalties or fines levied due to errors or omissions.
- d) seller shall mark containers or packages with Buyer's Order number, part number, part description, quantity, and the names and addresses of consignor and consignee or other markings as set out in the Order. Bills of lading shall include the Order number, package weight, and package dimensions.
- e) Unless otherwise specified, delivery shall be EXW Destination, in accordance with Incoterms 2000.

### **33. INDEPENDENT CONTRACTOR RELATIONSHIP**

Buyer and Seller are independent contracting parties and this Order does not create any agency, partnership, or joint venture relationship between Buyer and Seller or between Buyer and Seller personnel for any purpose whatsoever, nor does this Order grant any power or authority to either party to accept on behalf of the other party any order or agreement, or to create any obligation on behalf of or in the name of the other party.

### **34. SURVIVAL**

If this Order expires, is completed, or is terminated, the following provisions shall survive: Applicable Laws, Export Control, Warranties, Infringement Indemnity, Seller's Data, Property Rights, Proprietary Information, Duplication, and disclosure, Publicity, Insurance, Independent Contractor Relationship, Severability, Remedies, and Waiver.

### **35. REMEDIES**

The rights of Buyer hereunder shall be in addition to the rights and remedies at law or in equity.

### **36. OFFSETS**

This Order has been awarded with cognizance of Buyer's industrial participation/offset programs. All offset credits resulting from this Order are the sole property of Buyer and shall, at Buyer's option, be applied to the industrial/offset program of its choice. Seller agrees to assist Buyer in securing appropriate offset credits from respective government authorities.

### **37. WAIVER**

Buyer's failure or delay to insist, in any one or more instances, upon the performance of any term or terms of this Order, or to exercise any right or remedy available hereunder, shall not be construed as a waiver or relinquishment of Buyer's right to such performance or the future performance of such term or terms, right, or remedy, and Seller's obligation in respect thereto shall continue in full force and effect.

### **38. SEVERABILITY**

Should any provision of this Order or application thereof be deemed invalid, illegal, unenforceable, then that provision shall be deemed severed from the Order and the remainder of this Order will remain valid, enforceable and in full force and effect. The Buyer and Seller shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory provision of like economic intent and effect. In the event any provision in whole or part thereof is rendered invalid, such invalidity shall not affect the validity of other provisions.