



**DEFINITIONS:**

- (a) **Buyer** – shall mean UltraTech Aerospace, Inc., operating as UltraTech Aerospace, Inc., having its principal place of business at 3000 Power Drive, Kansas City, KS 66106.
- (b) **Order** – shall mean any document (including but not limited to Purchase Agreement, Purchase Order, Adoption Agreement, Blanket Order, Release, GTA, or LTA) which incorporates by reference these Terms and Conditions.
- (c) **Product** – shall mean any product or service specified in an Order to be delivered by Seller to Buyer under these Terms and Conditions.
- (d) **Seller** – shall mean the provider of goods and/or services set forth under an Order.
- (e) **Terms and Conditions** – shall mean the terms and conditions set forth herein.

**1. Applicability**

These Terms and Conditions, together with any Order (collectively, this “Agreement”), comprise the entire agreement between Buyer and Seller with respect to the sale of Products and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms and Conditions prevail over any of Buyer’s general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms and notwithstanding Buyer’s acceptance of or payment for any shipment. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. Fulfillment of an Order by Buyer constitutes acceptance of these Terms and Conditions.

All Orders that reference this document are governed by all standard clauses in these Terms and Conditions. When an Order notes special clauses, the standard clauses of these Terms and Conditions apply as well as those special clauses specifically noted in an Order, and, in the event there is a conflict between the special clauses set forth in an Order and the standard clauses set forth in these Terms and Conditions, the special clauses set forth in an Order shall govern. To the extent of a conflict between any Product specifications and any Product drawings, Product specifications shall govern.

**2. Alteration of Terms**

These Terms and Conditions may only be amended or modified by a written instrument stating specifically that it amends these Terms and Conditions signed by an authorized representative of Buyer and Seller.

**3. Delivery And Performance**

Seller shall deliver Products in the quantities and on the date(s) specified in an Order or as otherwise agreed in writing by Seller and Buyer (the “Delivery Date”). If Seller fails to deliver the Products in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Products on the Delivery Date.

**4. Quantity**

If Seller delivers more or less than the quantity of Products ordered, Buyer may reject all or any excess Products. Any such rejected Products shall be returned to Seller at Seller’s sole risk and expense. If Buyer does not reject the Products and instead accepts the delivery of Products at the increased or reduced quantity, the Price for the Products shall be adjusted on a pro-rata basis.

**5. Title and Risk of Loss**

Title and risk of losses passes to Buyer upon delivery of the Products by Seller to Buyer.



**6. Price; Taxes**

The price of the Products is the price stated in an Order (the "Price"). Unless otherwise specified in an Order, the Price includes all fees, and applicable taxes, including, but not limited to, all federal, state and local sales, use and similar taxes.

**7. Payment Terms**

Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms and Conditions. Buyer shall pay all properly invoiced amounts due to Seller within 30 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

**8. Right to Make Changes**

Buyer will have the right, by written notice, to make changes in the Products furnished by the Seller (each, a "Change Order"). Seller shall within 5 days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed Products subject to the cost proposal and the terms and conditions of this Agreement.

**9. Inspection and Rejection of Nonconforming Products**

Seller shall permit Buyer's inspectors or Buyer's customers (including the United States government) to have access to the Seller's plant at all reasonable times (on or after the Delivery Date) for the purpose of inspecting any Products or work in process for production of such Products, and to conduct preliminary tests on work in process. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Products and the delivery of replacement Products. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order or these Terms and Conditions, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

**10. Warranty**

Seller expressly warrants that all Products supplied under an Order shall: (a) conform to specifications, drawings, samples and other descriptions specified by Buyer; (b) be merchantable and free from any defects in workmanship, material and design; (c) be fit and sufficient for their intended purposes and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's patent or other intellectual property rights. Seller warrants further that the prices charged under any Order are no higher than prices charged to other customers of Seller for similar quantities under similar conditions, and if Seller breaches this warranty, the prices of the Products supplied under any Order shall be reduced accordingly. Buyer's approval of specifications, drawings, samples and/or other descriptions furnished by Seller shall not relieve Seller of its obligations as described in this paragraph or otherwise under any Order. These warranties shall survive any inspection,



acceptance or payment by Buyer, its successors, assigns, customers, and the ultimate users of the Products supplied under any Order.

**11. Termination**

In addition to any remedies that may be provided under these Terms and Conditions, Buyer reserves the right to terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Products, if Seller has not performed or complied with any of these Terms, in whole or in part (including, without limitation, if the Delivery Date is outside the quoted lead time), without any liability to Buyer. In the event of such termination, Seller shall immediately stop all work, and shall immediately notify any of its supplier or subcontractors to cease such work. If Buyer terminates this Agreement for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted by Buyer prior to the termination.

**12. Indemnification**

Seller shall defend, indemnify and hold harmless Buyer, its shareholders, directors, officers, employees, agents, representatives, and Buyer's subsidiaries, affiliates, successors, and assigns and their respective shareholders, directors, officers, employees, agents, representatives (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or in connection with the Products purchased from Seller (whether by reason of any act or omission of Seller or its employees, suppliers, subcontractors, or agents) or Seller's negligence, wilful misconduct or breach of these Terms and Conditions. Seller shall not enter into any settlement without Buyer's prior written consent.

Seller shall defend, indemnify and hold harmless Buyer and any Indemnitee from and against any and all Losses arising out of or in connection with any claim that Buyer's or any Indemnitee's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

**13. Assignment; Subcontracting**

Seller may not assign, transfer, delegate or subcontract any part of the work under any Order without prior written consent of Buyer. Once consent is granted by Buyer, any change in subcontracted work will also require written consent of Buyer. Buyer's approval shall not relieve Seller of its obligations under this Agreement, and Seller shall remain fully responsible for the performance of each such subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier.

**14. Buyer Property**

All property of Buyer, furnished or made available to Seller for performance of work under any Order, shall be segregated from Seller's property and be marked and identified as Buyer's property. Such property shall be used exclusively for performance of Seller's obligations under this Agreement and shall be returned to Buyer at Buyer's written request or upon termination, cancellation or completion of this Agreement. Seller agrees to (a) maintain such property in good condition and assume all risks and liabilities for loss or damage thereto and (b) purchase insurance to cover the replacement cost of such property.



The foregoing provisions shall apply to all property of Buyer's customers which Buyer furnishes to Seller in connection with any Order with the same force and intent as if that property were the property of Buyer.

**15. Use Of Information**

Seller shall not disclose to any person or entity, other than those employees of Seller who have a need to know, any information of Buyer, whether written or oral, which Buyer may obtain from Buyer or otherwise in performance of its obligations under this Agreement.

**16. Insurance**

Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000 in order to meet all the liabilities that are mentioned herein.

**17. Compliance With Law**

Seller shall comply with all applicable federal, state and local laws, regulations and orders. Seller shall maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

**18. Waiver**

No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**19. Governing Law**

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Kansas without giving effect to any choice or conflict of law provision or rule.

**20. Equal Opportunity Clause**

Seller shall comply with the requirements of 48 C.F.R. §§ ("FAR") 52.222-21 and 52.222-26 and will not maintain segregated facilities or discriminate against any employees because of age, race, color, religion, sex or national origin or any other ground prohibited by law. Seller shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, race, color, religion, sex or national origin. Seller shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity Clause.

For subcontracts/purchase orders of \$15,000 or more: Seller shall abide by the requirements of FAR 52.222-36 and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

For subcontracts/purchase orders of \$150,000 or more: Seller shall abide by the requirements of FAR 52.222-35, FAR 52.222-37, and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified veterans.



**21. Export Control**

- a. Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751 – 2794, including the International Traffic in Arms Regulations (the “ITAR”), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401 – 2420, including the Export Administration Regulations, 15 C.F.R. 730 – 774; and the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data, or services to foreign persons employed by or associated with, or under contract to, Seller or Seller’s lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- b. Seller agrees to notify Seller if any deliverable under any Order has an export classification other than EAR99.
- c. Should Seller’s product or services originate from a foreign location, those products may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of the originating country. Seller shall further be responsible for complying with any laws or regulations governing the importation of the articles into the United States.
- d. Seller shall immediately notify Buyer’s Procurement Representative if Seller is, or becomes, listed on any Denied Parties List or if Seller’s export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency.
- e. If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents by accepting any Order that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- f. Seller shall provide prompt notification to the Buyer’s Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR relating to any Order, or the initiation or existence of a U.S. Government investigation that could affect the Seller’s performance under any Order.
- g. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys’ fees, all expense of litigation and/or settlement, and court costs, related to export control issues and caused by any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier during the performance of any Order.

**22. Other Flow Down Requirements**

Seller shall comply with the requirements of the clauses provided at FAR 52.244-6 to the extent that they are applicable to Seller by their terms.

**23. Product Safety, Conformity, and Ethical Behavior**

Suppliers shall ensure personnel processing orders or performing work affecting conformity to product or service are trained and aware of the importance of their activities associated with meeting the requirements of UTA purchase orders



Suppliers shall ensure that personnel processing orders or performing work are trained and aware of their contribution to product safety and the importance of ethical behavior associated with meeting the requirements of UTA purchase orders.

**24. First Article Inspection Reports**

When required - all First Article Inspection Reports must be in AS9102 format unless alternate First Article Inspection requirements are designated on Buyer Purchase Order. Current revision of AS9102 must be used based on Buyer Purchase Order date.

The Seller shall furnish a First Article Report with the first shipment of each item when:

1. It is the first time the seller has made/supplied the item to UTA.
2. Drawing Revision changes a drawing dimension. (for the change only).
3. A seller makes a change in major sub-tier support, i.e. different machine shop, chemical treatment, plating, from the original FAI.
4. Seller makes an engineering prototype.
5. After two (2) years lapse in production.

**25. Conflict Minerals**

Seller shall not provide any tantalum, tin, tungsten or gold (the “minerals”) mined from Democratic Republic of the Congo, Angola, the Republic of the Congo, Uganda, Rwanda, Burundi, Tanzania, Zambia, South Sudan and the Central African Republic (the “covered countries”) that contribute to armed conflict or human rights abuses. Upon request, Sellers shall provide country of origin information for the minerals.

If the Buyer has reason to believe the minerals originated in the covered countries and contribute to armed conflict or human rights abuses, the Buyer may evaluate other sources of supply to determine whether to discontinue such procurement activity with said Seller.

**26. Counterfeit Parts**

If suspect/counterfeit parts are furnished under this purchase order and are found in any of the goods delivered hereunder, such items will be impounded by Buyer. The Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer’s external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller’s goods after counterfeit parts have been exchanged. Seller shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages.

At Buyer’s request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasigovernment directive, indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller’s parts contain counterfeit parts.

**27. REACH Compliance**

Upon Buyer’s request (REACH Request), Seller shall provide information on any items delivered hereunder which contain regulated substances (REACH Disclosure) as specified in EC Regulation No 1907/2006 of the European Parliament and of the Council of December 18, 2006 concerning Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH). Seller shall promptly provide Buyer with an updated REACH Disclosure whenever an item contains a substance that is added to the REACH Candidate List for Authorization, is subject to Authorization, or is Restricted.