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## General Terms and Conditions of Purchase

### 1. TERMS AND CONDITIONS

- 1.1. These general conditions of purchase are in relation to MTU America Inc. issuing a purchase order or scheduling agreement ("GCP") together with the terms and special conditions appearing on a purchase order and/or scheduling agreement ("Order"), any executed supply agreements concerning the Deliverables between the Parties ("Supply Agreement") and applicable Government terms, together called "Procurement Conditions", and are the only conditions on which MTU America Inc. procures services or goods or both ("Deliverables"). MTU America Inc. (or "MTU") means the entity that has signed a Supply Agreement or created a contract with the supplier accepting an Order ("Supplier"). MTU and the Supplier are separately and together referred to as "Party" or "Parties". Any terms other than the Procurement Conditions will be null and void.

### 2. ORDERS

- 2.1. MTU is bound by written Orders only. The Supplier shall confirm acceptance of MTU's Order in writing without undue delay (using the order confirmation attached to the order form if available) unless MTU waives this requirement. If the Supplier's order confirmation deviates from the Order, MTU will only be bound by the Order if MTU has consented to the deviation in writing. The acceptance of the Deliverables or payment for same shall not constitute consent. The Supplier shall quote the order number and item, or material number in the order confirmation (where an order confirmation is agreed), in all other written correspondence. If the Supplier fails to accept the Order within three (3) working days, MTU may revoke the Order.

### 3. TITLE, TRANSFER OF RISK

- 3.1. Title to goods will pass to MTU upon receipt at MTU's designated facility. The Supplier may reserve title to its Deliverables until the consignment has been paid for in full. However, MTU may continue to use, process, and on-supply the Deliverables, in accordance with their intended use. For goods, the transfer of risk shall pass in accordance with the agreed terms of delivery, or alternatively upon receipt of the goods at the place of performance. For services, the transfer of risk shall pass upon acceptance at the place of installation/performance. If the goods or services are subject to acceptance following delivery or performance as specified in the Order, transfer of risk shall pass upon such acceptance.

### 4. DELIVERY

- 4.1. Delivery: Timely delivery in accordance with the Order is a material condition of the Procurement Conditions. Unless otherwise provided for on the Order, Deliverables will be delivered to MTU FCA Supplier's location (INCOTERMS® 2010). If the delivery times as set out in the Order cannot be met, or at any time at MTU's request, the Supplier will provide prompt information to MTU as to the causes and the mitigation action the Supplier proposes to take. The packaging must be appropriate for the Deliverables being delivered, taking into consideration the means of transport and the route, to ensure that the packaging is able to withstand all the demands of transportation and warehousing. Details are stipulated in the General Conditions for Delivery ([http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/E-570\\_Allgemeine\\_Anliefervorschriften\\_englisch.pdf](http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/E-570_Allgemeine_Anliefervorschriften_englisch.pdf)).
- 4.2. Agreed delivery dates and periods are binding on Supplier. The date on which the Deliverables arrive at the specified delivery address shall be controlling for determining compliance with delivery dates/periods. MTU may, in its sole discretion, partially rescind the Order with respect to Deliverables not delivered on time.
- 4.3. Partial delivery/performance shall be permitted if specifically agreed to by MTU, but is otherwise not permitted. If partial or successive delivery/performance is agreed, MTU may, to the extent reasonable, postpone the dates of delivery/performance and/or quantity of Deliverables to be delivered.
- 4.4. The Supplier shall notify MTU in writing without undue delay of foreseeable delays in the provision of Deliverables and advise MTU of the anticipated duration of any such delay.
- 4.5. MTU may postpone the agreed dates for the delivery/performance of Deliverables by the Supplier by up to six (6) months if the anticipated need for the Deliverables is deferred as a result of strikes or other disruptions to MTU's operations. Any such postponement shall not give rise to any claims of any kind by the Supplier.
- 4.6. MTU may accept early delivery/performance, to the extent reasonable, by written authorization provided to the Supplier. However, the agreed periods for payment shall still commence on the previously agreed delivery/performance date or subsequent invoice date. The Supplier shall bear any additional warehousing costs MTU incurs as a result of taking delivery early.
- 4.7. Late Delivery: If delivery is delayed other than for reasons set out in clause 23 (Force Majeure), then without prejudice, and in addition to, MTU's other rights and remedies, the Supplier will pay MTU a late delivery charge in an amount equal to two and a half percent (2.5%) of the invoice amount of the delayed Deliverables for each week of delay, calculated on a daily pro-rata basis, not to exceed an aggregate amount of ten percent (10%) of such invoice amount. MTU and Supplier agree that actual costs suffered by MTU as a result of a late delivery may be difficult to ascertain, uncertain in nature, and incapable of exact determination in each instance, and that the late delivery charge is a good faith estimate of the costs suffered by MTU, and not a penalty resulting from late delivery. The late delivery charge does not include charges for which MTU may be/become liable to a third party.
- 4.8. Aftermarket and Service Requirements: Suppliers shall maintain availability of the Deliverables at a reasonable price following cessation of production for a period of fifteen (15) years.



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## 5. PRICES, INVOICES AND PAYMENT

- 5.1. The price stated on an Order is inclusive of all duties, levies, and taxes in the country of origin of the Deliverables, excluding value-added tax or equivalent tax. MTU will not pay Supplier any state or local sales, use, or similar tax unless Supplier is required by law to collect such taxes from MTU. Federal excise taxes charged to MTU will be separately stated or indicated as being included in the unit price. Supplier agrees that no tax for which an exemption exists will be included in the price and will not be subsequently charged. Supplier agrees to pay any and all personal property and/or ad valorem taxes assessed or levied against any property placed with Supplier by MTU for the purpose of fulfilling the Order.
- 5.2. Where the Procurement Conditions require the Supplier to submit an invoice, the Supplier will post invoices to MTU's Accounts Payable Department at the address on the Order on the day on which Deliverables are dispatched or completed. The invoice will include the Order number, Deliverable part number and description, the quantity, the price per unit and number, and date of the delivery note. Invoices may relate to no more than one Order.
- 5.3. Each shipment shall be delivered with one delivery note enclosed with the shipping documents, and one delivery note affixed to the package. In addition to the aforementioned information, the delivery notes shall include the date of dispatch, the type of packaging, a description of the goods, the quantity and weight of the shipment (gross and net weight), as well as the delivery address (site and unloading point). Invoices shall not constitute delivery notes. Details are stipulated in the General Conditions for Delivery ([http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/E-570 Allgemeine Anliefervorschriften\\_englisch.pdf](http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/E-570_Allgemeine_Anliefervorschriften_englisch.pdf)).
- 5.4. Unless otherwise agreed, payment shall be due, at MTU's option, with a 2% discount within 60 days of receiving the Deliverables and the invoice, or in full (net) within 90 days, provided that the Supplier has supplied such Deliverables in accordance with the Procurement Conditions and, where the Supplier is required to submit an invoice, such invoice is accurate and was received by MTU's Accounts Payable Department within seven days of dispatch or completion of the Deliverables. Where MTU collects Deliverables from non- MTU premises, "received" means formal receipt by MTU's goods received area. Without prejudice to MTU's other rights and remedies, MTU may deduct from any payments due to the Supplier under any Procurement Condition the amount of any bona fide contra accounts or other claims that MTU may have against the Supplier in connection with the Procurement Conditions. MTU may implement and pay Supplier based on a procedure for the automatic settlement of goods receipts, such as 'Evaluated Receipt Settlement'.
- 5.5. In addition to any right of setoff provided by law, all amounts due Supplier will be considered net of indebtedness of Supplier to MTU and its subsidiaries; MTU may deduct any amounts due or that may become due from Supplier to MTU and its subsidiaries from any sums due or that may become due from MTU to Supplier.

## 6. QUALITY AND WARRANTY

- 6.1. To the extent applicable for the performance of an Order, Supplier will comply with all quality requirements of MTU, notably the MTQ 5003, MTQ 5012 and the MMN332 as set out on the MTU website at <http://www.mtu-online.com/mtu/purchasing/downloads/?L=15>, and with all specification requirements and any other quality requirements set out in an Order. The Supplier will inspect and release Deliverables in accordance with the said quality requirements.
- 6.2. The Supplier warrants that all Deliverables will conform to the Procurement Conditions and will be merchantable, free from defects in material, workmanship, and, if the Supplier has responsibility for design, the Supplier further warrants that all Deliverables will be free from defects in design. Unless otherwise set forth in the Procurement Conditions, the duration of the warranty provided by Supplier to MTU for the Deliverables will begin on the date of receipt of the Deliverables by MTU and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the Deliverables or any components, engines, and/or equipment into which the Deliverables are incorporated, including, but not limited to the Clean Air Act, the California Code of Regulations, Title 13, Motor Vehicles, the Canadian Environmental Protection Act, and their respective implementing regulations, as revised from time to time; (b) expiration of any warranty applicable to the Deliverables provided by MTU to MTU's end customer for the component, engine, and/or equipment into which the Deliverables are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Procurement Conditions, including in MTU's specifications or quality standards.
- 6.3. Notwithstanding the foregoing clauses, Supplier warrants and guarantees that the Deliverables covered by the Procurement Conditions will not pose an unreasonable risk to user or equipment safety.
- 6.4. If Deliverables do not conform to the requirements set out in clauses 6.1 and 6.2 above ("Non-Conformance") and without prejudice to other rights and remedies which MTU may have, the Supplier will promptly replace or, where appropriate, repair or rectify any such Non-Conformance at its own expense within 30 days of receipt of written notice of Non-Conformance. If the Supplier fails to promptly repair, rectify, or replace any Non-Conformance, MTU may, without prejudice to its other rights and remedies, (a) choose to accept the Non Conformance and MTU will be entitled to reasonably adjust the Order price; (b) rectify or arrange to have rectified such Non-Conformance; or (c) procure Deliverables from alternate sources in order to meet customer requirements, without further obligation to Supplier.
- 6.5. Recalls/ Repair Campaigns: If Supplier's Deliverables, or components that make up the Deliverables, or any component, engine, and/or equipment incorporating the Deliverables ("Recalled Deliverables"), create or contribute to a modification, campaign, recall, or other corrective service actions that MTU must initiate either on its own or under, but not limited to, the Clean Air Act, the California Code of Regulations, Title 13, Motor Vehicles, the Canadian Environmental Protection Act, the National Traffic and Motor Vehicle Safety Act, and the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, and their respective implementing regulations, as revised from time to time, the Supplier agrees to provide reasonable assistance to MTU in developing a modification, campaign, recall, or corrective service strategy and agrees to cooperate with MTU and any applicable governmental agency, entity, or authority ("Governmental



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Body") in monitoring the modification, campaign, recall, or corrective service operation and in preparing such reports as may be required. The Supplier agrees it will not voluntarily initiate any modification, campaign, recall, or corrective service of Recalled Deliverables without the prior written consent of MTU. Supplier shall, at the request of MTU, give MTU all reasonable assistance in locating and recovering any Recalled Deliverables. Supplier shall immediately notify and provide copies to MTU of any communications, whether relating to recalls or otherwise, with any Governmental Body. Supplier, at its own cost, shall repair or replace all Recalled Deliverables, including labor and administrative costs, based upon Supplier's proportionate responsibility for the defect or non-compliance with the applicable laws, rules, or regulations, and MTU's reasonable instructions. Supplier will not disclose or make available to any third party any information related to the modification, campaign, recall, or corrective service.

- 6.6. MTU will be entitled to recover from Supplier any and all damages, including, without limitation, any direct, indirect, incidental, and consequential damages, and all legal and other professional fees and costs incurred by MTU as a result of Recalled Deliverables, including, without limitation, costs, expenses, and losses incurred by MTU (a) in inspecting, sorting, testing, repairing, or replacing Recalled Deliverables or components, engines, and/or equipment incorporating the Recalled Deliverables; (b) resulting from production interruptions; (c) in conducting the modification, campaign or recall or other corrective service actions; or (d) resulting from personal injury, including death, or property damage. If requested by MTU, Supplier will enter into a separate agreement for the administration and processing of warranty chargebacks for nonconforming goods. This clause 6.6 does not limit Supplier's liability under other provisions of the Procurement Conditions.

## 7. TERMINATION

- 7.1. Without prejudice to any rights and remedies, MTU may immediately terminate an Order in whole or in part by giving the Supplier written notice, identified as a "Notice of Termination", whereupon all work on that Order will cease. MTU will pay the Supplier in full and final satisfaction of all claims arising out of such termination: (a) the price of all Deliverables which the Supplier has justifiably produced and completed in accordance with such terminated Order, or part of the Order, and which MTU has not paid for; (b) the cost of settling any legally justified claims in connection with the necessary termination of sub-contracts justifiably entered into in respect of the terminated Order, or part thereof, and the cost to the Supplier of any justified work in progress in respect of such Order.
- 7.2. The amount payable to the Supplier under clause 7.1 above will not exceed the total amount that would have been payable to the Supplier for the Deliverables, and payment is subject to the Supplier submitting its notice of claim within two (2) calendar months of the termination date. Any finished Deliverables and any work in progress paid for by MTU under clause 7.1 above will be delivered to MTU or be held by the Supplier as MTU property in accordance with clause 10 (MTU Property and Security Interest) below.
- 7.3. If MTU has reasonable grounds for believing the Supplier will be unable to substantially fulfill its obligations, MTU may require the Supplier to provide reasonable written evidence that the Supplier will fulfill its obligations. If the Supplier fails to provide such evidence within thirty (30) days of MTU's request, MTU may treat that failure as a material breach and terminate the relevant Order or any agreement relating to the Deliverables in whole or part.
- 7.4. Either Party has the right, without prejudice to its other rights and remedies, to terminate any Order or the Supply Agreement without liability, if the other Party (a) commits any material breach of any of its obligations under the Procurement Conditions and fails to rectify said breach within thirty (30) days of written notice (no notice period will apply for a breach of delivery terms), (b) makes a general arrangement with its creditors, ceases or threatens to cease to carry on its business or a substantial part of it, (c) is unable to pay its debts within the meaning of the applicable law as defined below, or (d) enters into liquidation whether compulsory or voluntary, except as a solvent company for the purposes of amalgamation or reconstruction, has an administrator or administrative receiver of the whole or part of its assets appointed, or if any equivalent proceeding under any competent jurisdiction occurs.
- 7.5. Except for clause 7.1 where termination is effective immediately on giving the Notice of Termination, termination will be affected thirty (30) days from the terminating Party issuing a notice of termination to the other Party.

## 8. INTELLECTUAL PROPERTY

- 8.1. "Intellectual Property" ("IP") includes any and all inventions, whether or not patentable, utility models, trademarks, business methods, technical data, products, component designs, drawings, developments, processes and any improvements or enhancements thereto, copyrights and moral rights, database rights, trade secrets and know-how, in each case whether registered or unregistered, and also including identified technical and non-technical or business-related information such as specifications, computer programs, drawings, or blueprints.
- 8.2. Supplier acknowledges that MTU is the Original Equipment Manufacturer (OEM) of, and owns all rights and titles to the Intellectual Property provided to Supplier in connection with the Deliverables covered by the Procurement Conditions.
- 8.3. With respect to any Deliverables that arise out of any research or development that is funded by MTU, Supplier agrees that such Intellectual Property arising therefrom, including, without limitation, new technologies that are developed under such funding and all Intellectual Property rights in and to the same, shall hereby vest solely and absolutely in MTU. Any and all MTU owned or licensed Intellectual Property which may be supplied to the Supplier pursuant to any Order will remain the sole and undivided property of MTU and/or its licensors. The Supplier will require its employees, sub-contractors, and agents to sign all papers and do such acts and things as are reasonably necessary for MTU to secure title in, and to pursue formal patent grant or registration of, any Intellectual Property and Intellectual Property rights arising out of or in connection with any Order as contemplated by this clause.
- 8.4. If any allegation is made or any claim asserted against MTU, or any person claiming title from or through MTU, that any act done or proposed to be done in relation to Deliverables constitutes a violation or infringement of any patent, copyright,



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- registered design, or other proprietary right held by a third party, the Supplier will indemnify MTU and hold MTU harmless for and against any loss or damage (including, without limitation, all costs and expenses) arising directly or indirectly out of such allegation or claim, howsoever caused, unless the allegation or claim is the direct result of the Supplier following a design or process required by MTU.
- 8.5. In addition to the indemnity set out in clause 8.4 above, the Supplier will procure for MTU a worldwide, non-exclusive, royalty-free, irrevocable license to manufacture, use, and sell the Deliverables or have such replaced with substantially equivalent non-infringing Deliverables.
  - 8.6. In consideration for the Intellectual Property provided to Supplier by MTU as well as technical assistance to expedite Supplier qualification, funding for tooling, cost of non-recurring expense, and qualification pieces, Supplier agrees that it may sell Deliverables contemplated by the Procurement Conditions (including revisions over time) only to MTU or to third parties authorized in writing by MTU. Any sale of such Deliverables to any third party without express written consent from MTU will constitute a material breach of the Procurement Conditions, for which MTU will be entitled to obtain immediate injunctive relief without the necessity of posting bond, in addition to any other remedy available at law or in equity.
  - 8.7. All Intellectual Property provided to Supplier in connection with its performance under the Procurement Conditions is confidential and proprietary to Supplier, and may not be used by Supplier or disclosed by Supplier to any third party, except as necessary for Supplier to perform obligations under the Procurement Conditions or as otherwise approved by MTU in writing.
  - 8.8. While the United States Government or a foreign government may have rights to some technical data associated with the Deliverables or any engine part covered hereunder, MTU must protect its Intellectual Property associated with the Deliverables or engine parts. Supplier agrees to promptly notify MTU in the event it receives a Request for Proposal (RFP), Request for Information (RFI), or similar inquiry from a third party about performing the manufacture or remanufacture of any engine parts, Deliverables, components, or other elements covered by the Procurement Conditions or related Orders. MTU and Supplier will meet and confer on whether and how Supplier can respond to the inquiry.
  - 8.9. If in the course of performing the Order, the Supplier generates work products that are copyright protected, MTU shall have an exclusive, royalty free, transferable, perpetual, worldwide license to use any such work products in their original or modified form as MTU sees fit and without restriction as to the type of such use (specifically, to reproduce or have reproduced or to disseminate), and to grant sublicenses to third parties for any and all types of use at MTU's sole discretion.

## **9. PROPRIETARY INFORMATION**

- 9.1. "Proprietary Information" means all commercial, financial, technical, or operational information, and any Intellectual Property not publicly known or available, which by its nature is confidential, and such information that has been or may be disclosed or otherwise made available, in whole or in part, to a receiving Party or any Representative in any form or medium. "Representative" means any one or more directors, officers, temporarily contracted personnel, or Affiliate of a Party or, in the case of MTU, any of its risk- and revenue-sharing participants insofar as those participants require Proprietary Information relating to the Supplier including, without limitation, information relating to specifications and directed buy price. "Affiliates" means any entity that controls, is controlled by, or is under common control with either Party, and "control" means (a) an ownership interest, directly or indirectly, of more than fifty percent (50%) in such entity or Party, or the maximum percentage permitted under local laws or regulations in those countries where more than fifty percent (50%) ownership by a foreign entity is not permitted, or (b) the ability to direct the management or policies of such entity or Party, whether through ownership, contract, or otherwise. The Parties agree that they may have to exchange and disclose to each other certain of their Proprietary Information. Such information may include hardware, software, component design, manufacture, inspection, repair and overhaul, business information relating to supplies, pricing, costs, profits, business plans and strategies, customer or vendor lists, and legal or financial advice. Documents containing Proprietary Information should be marked as "Proprietary" and, for non-US purposes, the term "Confidential" may be used instead. However, the Parties agree that such information will be considered Proprietary Information, even if it is inadvertently not marked as such. Proprietary Information will be disclosed only as necessary, and only for the purpose of fulfilling an Order. Title to any Proprietary Information will not be affected by any such exchange or disclosure.
- 9.2. Any Proprietary Information disclosed by one Party to the other in connection with an Order (whether from MTU and/or any of MTU's risk- and revenue-sharing participants) or a proposed Order will be treated in confidence and, save in respect of disclosures to Representatives, will not be copied or disclosed to any third party without the prior written consent of the disclosing Party. The receiving Party may only disclose Proprietary Information to its Representatives on a need-to-know basis in connection with these Procurement Conditions. The receiving Party will, at its sole cost and expense, ensure that the nondisclosure obligations of these Procurement Conditions are known, understood by, and complied with by its Representatives. The receiving Party will be liable for any and all breach of confidence by its Representatives. These provisions do not apply to Proprietary Information that: (a) is in the public domain at the time of receipt by the receiving Party through no fault of the receiving Party; (b) is lawfully received by the receiving Party from a third Party who is without an obligation of nondisclosure; (c) is developed by the receiving Party independently of the Proprietary Information, as established by extrinsic evidence, or (d) is known by the receiving Party at the time of receipt.
- 9.3. The receiving Party will make only such copies or duplicates of any Proprietary Information as are necessary for the purposes contemplated. All copies will be maintained in confidence in the same manner as the originals from which the copies were made.
- 9.4. Subject to clause 9.2, upon completion, cancellation, or termination or expiration of the Procurement Conditions of an Order, the receiving Party will destroy, or return upon request, any Proprietary Information, including all copies, belonging



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- to the other Party disclosed in relation to that Order. The receiving Party acknowledges that it has no rights of use in or to such Proprietary Information after the return date or date of destruction.
- 9.5. If the receiving Party or any of its Representatives believes it is required by law or is otherwise obliged to disclose any Proprietary Information to any third party for any reason, the receiving Party will provide the disclosing Party with immediate written notice of such requirement or obligation (together with a copy of any relevant access request, court order, or other evidence giving rise to such belief) to enable the disclosing Party to seek appropriate protective relief or to take steps to resist or narrow the scope of any required disclosure. The receiving Party will co-operate with the disclosing Party with respect to such matters and will, in any event, disclose only such Proprietary Information as it has ascertained, after taking legal advice, it is legally compelled to disclose, and will ensure to the best of its ability that all Proprietary Information so disclosed is accorded confidential treatment. The receiving Party will always notify the disclosing Party in writing of the means, content, and timing of such disclosure prior to such disclosure being made.
- 9.6. Notwithstanding the Supplier's obligation to obtain MTU written permission to disclose MTU Proprietary Information to a third party, the Supplier will ensure that all MTU Proprietary Information supplied by MTU under any Order that is in the possession of the Supplier's sub-tier suppliers, sub-contractors, and agents will be held in confidence, and that it will take all necessary steps and actions to ensure that any such third party complies with all confidentiality provisions herein. The Supplier will indemnify and hold MTU harmless in the event of any breach of such provisions by any such third parties. Furthermore, the Supplier will notify MTU immediately on becoming aware of a breach or a potential breach and will inform MTU of what actions it is taking to prevent or remedy such breach or potential breach to ensure risks to MTU are mitigated. MTU reserves the right to take its own action against any such third party that misuses, or that might reasonably misuse, its Proprietary Information, and to direct the Supplier to take certain actions.
- 9.7. The receiving Party will maintain and reproduce on all copies (including electronic documents), the proprietary markings and other legends contained on the Proprietary Information, and the receiving Party will not add any further markings to such Proprietary Information without the prior written consent of the disclosing Party. In addition, the Supplier will not, without the prior written consent of MTU, use any MTU Proprietary Information to manufacture, supply, design, develop, sell, or provide goods, work, or services to any third party.
- 9.8. Technical Information Disclosed: Any designs, items, components, process drawings, specifications, information, data, or computer programs which Supplier discloses to MTU in connection with this Order and which Supplier has not marked with a limited rights legend, in accordance with the applicable clause in DFARS part 252.227, will not be considered proprietary to Supplier or in any way restrict MTU's use of such data.
- 9.9. Each Party agrees not to: (a) act in breach of any duty of confidentiality owed to any third party in the course of performing its obligations under this Agreement, and (b) offer or provide any Proprietary Information, whether specifically related to the subject matter of this Agreement or otherwise.
- 9.10. Personal Information: If the Supplier deals in the personal information of any employee or contractor of MTU, it will at a minimum, and regardless where it is located and whether it is the controller or processor of such information, comply at a minimum with MTU's instructions, and the relevant laws on the protection of personal information in the jurisdiction of the MTU entity placing an Order. The Supplier will, at all times during and after the contract period, indemnify MTU and keep MTU indemnified for and against all losses, damages, costs or expenses, and other liabilities (including legal fees) incurred by, awarded against, or agreed to be paid by MTU arising from its breach of this clause, except and to the extent that such liabilities have resulted directly from the instructions of MTU.
- 10. MTU PROPERTY AND SECURITY INTERESTS**
- 10.1. All tools, equipment, parts, materials, drawings, or other documented data of every description produced and utilized under the Procurement Conditions will be utilized exclusively for the production of the Deliverables for MTU to be exclusively delivered to MTU or its specified agents. Unless otherwise agreed in writing, all tools, equipment, parts, materials, drawings, or other documented data of every description furnished to Supplier by MTU or specifically paid for by MTU, and any replacement thereof, or any materials affixed or attached thereto, will be and remain the property of MTU or, if MTU is not the owner, of the owner. Such property, and whenever practical each individual item thereof, will be plainly and permanently marked or otherwise adequately identified by Supplier as "Property of MTU" (or, if MTU is not the owner, "Property of [the owner]") and will be safely stored separate and apart from Supplier's property. Supplier will not substitute any property for the property furnished to Supplier by MTU, and will not use such property except in filling MTU's Orders. Such property will be subject to removal at MTU's written request, in which event Supplier will prepare such property for shipment and will deliver it as directed by MTU in the same condition as originally received by Supplier, reasonable wear and tear excepted, all at Supplier's expense. The foregoing will not be deemed to affect the rights, if any, of the United States Government in such property.
- 10.2. Supplier will indemnify MTU against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of MTU furnished property, whether such damage, injury, or death be caused by defects in such property, negligence in the use thereof, strict liability, or otherwise.
- 10.3. It will be the responsibility of the Supplier (at Supplier's own cost) to properly maintain and store the tooling, keep the same in good condition, and replace when necessary at Supplier's expense all such tools, material, and equipment in order that such tools, material, and equipment at all times have the capacity to produce parts in conformance with the Procurement Conditions. All such replacements will be the property of MTU and will be so identified. Any tooling paid for by MTU is the sole property of MTU.
- 10.4. Supplier agrees to provide, at any time upon the request of MTU, a report including a list of all MTU property, the location of such property, and the condition of such property and, if appropriate, a forecast of the remaining usable life of such property.



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- 10.5. Supplier assumes all liability for loss or damage, with the exception of normal wear or tear, and agrees to supply detailed statements of MTU's property in Supplier's possession, custody, or control at monthly intervals or as otherwise agreed upon to the extent necessary under applicable law.
- 10.6. If Supplier fails to pass the FAIR and RESA/FPA process, Supplier agrees that, upon MTU's request, it will immediately relinquish or destroy such tools that were created as a result of the Procurement Conditions. Supplier will be solely responsible for the costs associated with the relinquishing or destruction of such tooling. Failure to pass the FAIR and RESA/FPA process will constitute a material breach of the Procurement Conditions, and MTU may exercise its right to terminate pursuant to clause 7 (Termination) of these Terms and Conditions. If MTU requests destruction of the tooling, Supplier must certify as to the destruction of the tooling within thirty (30) days of receiving the request.
- 10.7. All such material, tools, and equipment identified by MTU that are solely used for production of parts identified in the Procurement Conditions, while in the Supplier's possession, custody, and/or control will be held at Supplier's risk and will be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with the loss payable to MTU.
- 10.8. Supplier grants to MTU a security interest in all such tools, materials, and equipment. The Supplier will, at MTU's request, execute and deliver to MTU a brief description of the collateral or such financing statements, amendments, and other necessary documents in order to establish and maintain a valid, attached, and perfected security interest in the tooling referenced in this clause 10 and as may be identified by MTU, unless otherwise agreed to in writing by both Parties. Supplier acknowledges that failure to do so constitutes a material breach of the Procurement Conditions. Supplier irrevocably authorizes MTU to file in any jurisdiction any initial financing statements and amendments as required by Article 9 of the Uniform Commercial Code or any equivalent state statute. Supplier agrees to furnish any such information needed to complete these filings to MTU promptly upon request. Supplier further ratifies and affirms its authorization for any financing statements and/or amendments, executed and filed by MTU in any jurisdiction prior to the date of this Order.
- 10.9. In addition to the above, Supplier will provide notice to its secured lenders of MTU interest in the above referenced tooling. Supplier acknowledges that failure to do so constitutes a material breach of the Procurement Conditions.
- 10.10. In the event of Supplier's bankruptcy or Supplier defaults on any of its realty leases, MTU reserves the right to enter Supplier's premises during normal business hours to remove such tools, materials, or equipment that is for the sole use of MTU.

## **11. FURTHER ASSURANCES**

- 11.1. Supplier agrees to do such reasonable acts and things and deliver, or cause to be delivered, such other documents as MTU may deem necessary to establish and maintain a valid security interest in the equipment, materials, and tooling referenced in clause 10 (free of all other liens and claims except permitted encumbrances), to defend title to the materials, equipment, and tooling referenced in clause 10 against any person(s) claiming any interest therein adverse to MTU, and to secure the payment and performance of the Procurement Conditions. MTU will execute and file a financing statement in those public offices deemed necessary to protect the security interests of MTU herein granted. If permitted by law, Supplier agrees that a carbon, photographic, or other reproduction of a financing statement may be filed as a financing statement.

## **12. SUPPLIER FINANCIAL REPORTS AND CONTROLLING INTEREST**

- 12.1. If requested by MTU, the Supplier will provide to MTU the most current financial reports: (a) for the Supplier; and (b) for any related company of the Supplier involved in producing, supplying, or financing the Deliverables or any component part of the Deliverables. Financial reports include income statements, balance sheets, cash flow statements, and supporting data. MTU may use financial reports provided under this clause only to assess the Supplier's ongoing ability to perform its obligations under the Procurement Conditions and for no other purpose, unless the Supplier agrees otherwise in writing. If requested by MTU, the Supplier will provide to MTU the most current financial reports: (a) for the Supplier; and (b) for any related company of the Supplier involved in producing, supplying, or financing the Deliverables or any component part of the Deliverables.
- 12.2. "Competitor" means the acquirer or any entity that is in the same corporate structure as such acquirer, including but not limited to parent, subsidiary, or joint venture company that offers or sells products or services in competition with the products or services offered or sold by any entity of the Rolls-Royce group. "Controlling Interest" means any interest sufficient to give the power to secure by law or corporate action the ability to direct and conduct the business of the Supplier.
- 12.3. While the Supplier is under contract to MTU, if a Competitor acquires, or is in due diligence to acquire, a Controlling Interest in the Supplier, its sub-contractor, or any holding company, subsidiary, or division of the Supplier performing under an Order, the Supplier will immediately notify MTU in writing of the actual or potential acquisition, subject to regulatory or statutory obligations and the identity of such likely acquirer, subject to the agreement of such likely acquirer.
  - 12.3.1. If the third party directly or indirectly acquiring a Controlling Interest in the Supplier is a Competitor, then MTU may, without prejudice to any other rights and remedies it may have, immediately, by written notice, terminate an Order or the Supply Agreement in whole or part.
  - 12.3.2. In addition to the provisions in this clause 12.3 above, if during the term of the Supply Agreement any third party or parties (acting together) takes any steps to acquire a Controlling Interest in the Supplier, its sub-contractor, or any holding company, subsidiary, group company, or division of the Supplier, the Supplier shall immediately notify MTU in writing of the actual or potential acquisition, and the identity of the third party or parties involved. If MTU determines that such an acquisition is or could potentially be contrary to its commercial interests, or could impair Supplier's performance of its obligations, MTU may, without prejudice to any other rights and remedies it



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may have, including specifically under clause 7.3, immediately by written notice terminate an Order or the Supply Agreement in whole or part. In the event of such a termination (a) MTU will, in full and final satisfaction of all claims arising out of such termination, pay the Supplier the price of all Deliverables which the Supplier has justifiably produced and completed in accordance with such terminated Order or part of the Order before the date of termination and for which MTU has not paid; and (b) if it has not already done so, the Supplier will promptly deliver all Deliverables produced and completed before the termination date to MTU, or hold such Deliverables as MTU property.

**13. INDEPENDENT CONTRACTOR**

13.1. Neither Party will (a) represent itself as the agent or partner of the other Party; nor (b) do anything (or omit to do anything) which might result in any person believing that such Party has the authority to contract or enter into commitments on behalf of, or in the name of, the other Party.

**14. PUBLICITY**

14.1. Neither Party will use the other Party's name or trademarks in any publicity without the other Party's prior written permission.

**15. WAIVER AND REMEDY**

15.1. The rights of a Party may be exercised as often as it considers appropriate, are cumulative, and apply in addition to any other rights available at law or equity. A waiver of any rights hereunder shall not be effective unless expressly waived in writing signed by the affected Party. Not exercising or a delay in exercising a right is not a waiver of that right.

**16. CONFLICT**

16.1. If there is a conflict of terms, the order of precedence will be: (a) any applicable Government terms; (b) the Supply Agreement; (c) these GCP; (d) terms in an Order other than Government terms; and (e) the statement of work (if any).

**17. TRANSFER AND THIRD PARTY RIGHTS**

17.1. Except as expressly provided, no Party will assign or otherwise transfer any of its rights or obligations to any third party. However, MTU may, upon prior written notice to the Supplier, transfer any or all of its rights or obligations under these Procurement Conditions to any of its Affiliates. Nothing in the Procurement Conditions will be construed as creating any rights in respect of any third parties (including, without limitation, any employee, officer, agent, representative, or sub-contractor of any Party) under, as a result of, or in connection with the Procurement Conditions.

**18. NOTICES**

18.1. All notices must be written in English.

18.2. All non-legal notices which are to be served under any Order must be in writing and addressed to the Party at the address on the Order. Such notices may be delivered by hand, sent by fax, or recorded delivery post.

18.3. All legal notices will be sent by registered or certified mail to the Parties at the addresses listed on the Order for the attention of the Legal Department or its approved and/or registered agent, pursuant to the Secretary of State of qualification or incorporation's records. Legal notices will not be effective if sent by fax. Any notice or communication in connection with this Order will be deemed to be given as follows: (a) if delivered in person, at the time of delivery; and (b) if sent by commercial courier service or registered or certified mail, on the date and at the time of signature of the delivery receipt.

**19. AMENDMENTS**

19.1. Except as expressly provided in this clause, the Procurement Conditions will not be amended other than by an agreement in writing that is expressly stated to amend the Procurement Conditions, signed by an authorized signatory of the Parties concerned.

**20. SEVERABILITY**

20.1. If any provision of the Procurement Conditions becomes illegal, invalid, or unenforceable in any jurisdiction in relation to any Party, that provision will not invalidate the remaining provisions or affect the legality, validity, or enforceability of that or any other provision in any other jurisdiction.

**21. REPRESENTATIONS**

21.1. The Parties agree that they have not contracted on the basis of any oral or written warranty representations, statements, communications, agreements, or undertakings ("Representations"). The Parties agree that they will have no right or remedy in respect of any Representations (whether made negligently or innocently), except those expressly incorporated in the Procurement Conditions. Nothing in this clause 21 will limit or exclude any liability for fraud.

**22. SURVIVAL**

22.1. The provisions of clauses 5 through 11, 13 through 24, 30, and 34 will survive any expiry or earlier termination, or after the Order becomes impossible to perform or is otherwise frustrated.



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**23. FORCE MAJEURE**

23.1. Any delay or failure of either Party to perform its obligations hereunder will be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the affected Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, inability to obtain power, material, labor, equipment, or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) will be given by the affected Party to the other Party as soon as possible but in any event not later than five days. During the period of such delay or failure to perform by Supplier, and after prompt notice from Supplier to MTU of the occurrence of such an event, MTU, at its option, may purchase Deliverables from other sources and reduce its requirement to Supplier by such quantities, without liability to Supplier, or have Supplier provide the Deliverables from other sources in quantities and at times requested by MTU and at the price set forth in the Order. If requested by MTU, the Supplier will, within 10 days of such request, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days, MTU may immediately cancel an Order without liability. The Supplier will, in any event, make all reasonable endeavors to mitigate the effects of any delay. For the avoidance of doubt, strikes, lock outs, or other industrial action, or disputes specific to the Supplier and/or its subcontractors or agents shall not be considered a force majeure event.

**24. INDEMNIFICATION**

24.1. **SUPPLIER WILL INDEMNIFY AND HOLD HARMLESS MTU AND MTU'S USERS AND CUSTOMERS FROM AND AGAINST ALL LOSSES, LIABILITIES, CLAIMS, OR DEMANDS WHATSOEVER (INCLUDING WITHOUT LIMITATION, ALL COSTS, EXPENSES, AND ATTORNEY FEES), ARISING OUT OF OR INCIDENT TO (A) SUPPLIER'S BREACH OF THE REPRESENTATIONS, WARRANTIES, OR COVENANTS SET FORTH HEREIN, (B) ANY RECALL OF DELIVERABLES OR ANY RECALL OF ENGINES AND/OR EQUIPMENT INCORPORATING ANY DELIVERABLES, TO THE EXTENT THE LOSSES, LIABILITIES, CLAIMS OR DEMANDS WERE CAUSED BY THE DELIVERABLES SUPPLIED BY THE SUPPLIER, (C) ALL THIRD PARTY CLAIMS BROUGHT AGAINST MTU, AND (D) ANY PERSONAL INJURY (DEATH) OR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY, IN ANY MANNER BASED UPON, OCCASIONED BY, OR ATTRIBUTABLE OR RELATED TO THE DELIVERABLES OR TO ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, IN THE PERFORMANCE, NEGLIGENT PERFORMANCE, OR NON-PERFORMANCE OF AN ORDER WHETHER BY SUPPLIER, ITS SUBCONTRACTORS, ANY EMPLOYEE OF SUPPLIER OR IT'S SUB-CONTRACTORS (EXCEPT WHERE SUCH THIRD PARTY CLAIM, INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY IS DUE SOLELY TO THE NEGLIGENCE OF MTU, ITS OFFICERS, AGENTS OR EMPLOYEES).**

**25. INSURANCE**

25.1. The Supplier will maintain in force: (a) product liability insurance with an annual aggregate limit of at least \$20,000,000 (twenty million United States dollars) per claim (or series of connected claims) or its equivalent in US dollars; (b) public liability insurance with a limit of at least \$20,000,000 (twenty million United States dollars) per claim (or series of connected claims) or its equivalent in the currency of the country in which the Supplier is based; (c) any other insurance which the Supplier is required by law to maintain; and (d) any other insurance which another supplier in the same industry as the Supplier or carrying on the same type of business as the Supplier, would usually maintain.

25.2. For the insurance policies set out at clause 25.1, the Supplier will: (a) ensure that MTU's interest is recorded on the policies, either as an 'additional insured' or via an 'indemnity to principal' clause for the benefit of MTU; (b) include a waiver of subrogation in favor of MTU; (c) on the renewal of each policy, send to MTU a broker's letter or certificate of insurance as confirmation of cover; and (d) administer and maintain the policies and the Supplier's relationship with its insurers at all times to preserve the benefits for MTU set out in this agreement; and will procure that the terms of such policies will not be altered in such a way as to diminish the benefit to MTU of the policies as provided at the date of this agreement.

25.3. The Supplier will, during the term of these Procurement Conditions and for a period of three (3) years thereafter, do nothing to invalidate the insurance policies set out in this clause 25; and will preserve MTU's entitlement under such policies; and will provide to MTU, 30 days' notice before any such policy is altered or cancelled in any material respect.

25.4. The Supplier will provide MTU with evidence of compliance with this clause 25 upon request and within 10 days of the Effective Date. If MTU is not satisfied with the Supplier's compliance with this clause 25, then MTU may, at its discretion, choose to procure the insurances set out at clause 25.1 on the Supplier's behalf and recover from the Supplier any resulting costs or premiums.

25.5. The Supplier's insurance coverage will not be MTU's exclusive remedy and is without prejudice to any other rights and remedies that MTU may have.

**26. THIRD PARTY MANUFACTURERS**

26.1. The Parties acknowledge that the terms and conditions (including the prices) applicable under the Procurement Conditions have been negotiated on the basis that, if the Supplier, at any time during the term of these Procurement Conditions either: (a) makes a separate offer to any Affiliate and/or sub-contractor and/or risk- and revenue-sharing participant of MTU to manufacture and supply the Deliverables; or (b) is requested by MTU to manufacture and supply the Deliverables to any Affiliate and/or sub-contractor and/or risk- and revenue-sharing participant of MTU, then the Supplier warrants, undertakes, and represents that it will enter into a supply agreement with the Affiliate and/or sub-contractor and/or risk- and revenue-sharing participant on the same or more favorable terms (including at the same or a more





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favorable price) to such Affiliate and/or sub-contractor and/or risk- and revenue-sharing participant (subject always to any specific requirements of the local law of such Affiliate and/or sub-contractor and/or risk and revenue sharing participant).

**27. SUSPENSION AND DEBARMENT**

27.1. Supplier agrees to comply with the requirements of Executive Order ("E.O.") 12549 and 12689, and 49 CFR Part 29; and certifies that Supplier and none of Supplier's principals or affiliates (in accordance with E.O.s 12549 and 12689, and 49 CFR Part 29), or its suppliers and subcontractors, are excluded or disqualified as defined at E.O.s 12549 and 12689, and 49 CFR 29. In addition, Supplier agrees to include a provision requiring such compliance in its lower-tier subcontracts relevant to the manufacture and supply of Deliverables. Supplier shall provide immediate notice to MTU in the event it, its principals or affiliates, or its supplier and/or subcontractor is suspended, debarred, or declared ineligible by any federal agency or state government/agency, or upon receipt of a notice of proposed debarment during the performance of this order.

**28. SMALL BUSINESS CONCERN SIZE STATUS**

28.1. Supplier shall notify MTU in writing if Supplier is qualified as a small business concern, small disadvantaged business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, or women-owned small business concern as defined in 48 CFR 52.219-8 or 49 CFR Part 26. Likewise, Supplier agrees to notify MTU immediately any time Supplier's small or disadvantaged business status changes in any way.

**29. COUNTRY OF ORIGIN AND OFF-SET TRADE**

29.1. Supplier will inform MTU of foreign content in Deliverables, including but not limited to the country of origin and dollar value of material and labor. Offset credits generated for all Deliverables purchased will be available solely for utilization by MTU against any offset obligation resulting from sales made by MTU to the country where such Deliverables were purchased. MTU may assign such credits generated to an affiliated business entity. Should MTU, for the sake of realizing a sale of the Deliverables, have to accept offset trade obligations with customers or countries, Supplier will, to support such activities, undertake to do its own offset trade, commensurate with the value of the Deliverable in relation to the Deliverable's price, for credit against MTU.

29.2. The Supplier will submit a valid certificate of origin or a movement certificate for the goods. The Supplier is responsible for any damage that results from any inaccurate or incorrect certificates of origin or movement certificates. To the extent that a declaration of origin is necessary in order to obtain tariff preferences, the Supplier shall provide such declaration in a timely manner in the correct and complete form and using the prescribed wording, with the exact goods description matching that of MTU, and including the item number, if available.

**30. GOVERNING LAW**

30.1. The Procurement Conditions and any claim, controversy, or dispute arising under or related to the Procurement Conditions, the relationship of the parties, or the interpretation and enforcement of the rights and duties of the parties will be governed by the laws of the State of Michigan without regard to any conflicts of law principles. **SUPPLIER CONSENTS TO THE EXCLUSIVE JURISDICTION OF MICHIGAN COURTS. ANY ACTION ARISING OUT OF OR RELATING TO THE PROCUREMENT CONDITIONS WILL BE BROUGHT IN THE STATE OF MICHIGAN.** Furthermore, to the fullest extent permitted by applicable law, each Party hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the above named courts, that the lawsuit or proceeding is brought in an inconvenient forum, or that the venue of the suit, action, or proceeding is improper. As permitted by Article 6 of the Convention on Contracts for the International Sale of Goods, MTU and Supplier agree that the Procurement Conditions are not governed by the Convention on Contracts for the International Sale of Goods, and is hereby expressly excluded.

**31. TOXIC SUBSTANCES, SDS, INGREDIENTS DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS**

31.1. (a) Supplier warrants that each chemical substance delivered under an Order will, at the time of sale, transfer, and delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 (B) of the Toxic Substance Control Act (Public law 94-469); (b) Supplier will submit to MTU, prior to and with each shipment, Safety Data Sheets prepared in accordance with the OSHA Hazardous Communication Standard, 29 CFR 1910.1200 and Appendix D; (c) If requested by MTU, Supplier will promptly furnish to MTU in such form and detail as MTU may direct: (i) a list of all ingredients in the Deliverables purchased hereunder; (ii) the amount of one or more of the ingredients; and (iii) information concerning any changes in or additions to such ingredients. If Supplier does not have immediate access to this information, Supplier will use all reasonable efforts to obtain this information and furnish it as requested to MTU as soon as possible after delivery; (d) Prior to and with the shipment of the Deliverables purchased hereunder, Supplier agrees to furnish to MTU sufficient warning and notice in writing (including appropriate labels on the Deliverables, containers, and packing) of any hazardous material which is an ingredient or a part of any of the Deliverables, together with such special handling instructions as may be necessary to advise carriers, MTU, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Deliverables, containers, and packing shipped to MTU; and (e) Supplier will comply with all laws, orders, and regulations pertaining to the use, storage, and disposal of restricted, toxic, and hazardous materials.



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**32. PACKING; MARKING AND SHIPPING**

32.1. Shipments shall be routed in accordance with MTU's instructions, and Supplier agrees to reimburse MTU for all expense incurred by MTU as a result of improper packing, marking, or routing. Subject to clause 36 below, MTU's Order number, part number, and Supplier's shipment identification number must appear on each package and bill of lading. Supplier will promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with MTU's instructions. MTU may specify the carrier and/or method of transportation, and Supplier will process shipping documents and route shipments of the goods from the delivery point accordingly. Deliverables for two or more of MTU's locations will be shipped in a separate package for each location. MTU may, from time to time, change shipping schedules previously furnished to Supplier, or direct temporary suspension of scheduled shipments. In the event of a conflict between the quantity of Deliverables shipped by Supplier and the quantity of Deliverable received by MTU, MTU's inventory count will be accepted as final on all shipments. Shipments in excess of those authorized may be returned to Supplier, and Supplier shall pay the transportation charges both ways for such shipments. Unless otherwise expressly agreed to in writing by MTU, no charge shall be made for containers, crating, boxing, bundling, dunnage, drayage, or storage. If MTU approves any drawings or sketches of the Supplier, this shall be understood as a mere courtesy, and not binding on MTU, nor does it release the Supplier from its duty to comply with and satisfy all requirements mandated by law or agreed to in these GCP. CAD and Office data shall be delivered in a form compatible with the systems MTU currently utilizes.

**33. CONFLICT MATERIALS**

33.1. In accordance with applicable "Conflict Minerals" laws, MTU must determine whether its products contain tin, tantalum, tungsten, or gold ("3TG") originating in the Democratic Republic of the Congo and adjoining countries which are defined as Angola, Burundi, Central African Republic, Congo Republic (a different nation than DRC), Rwanda, Sudan, Tanzania, Uganda, and Zambia ("Conflict Minerals"). To the extent Supplier supplies Deliverables containing 3TG to MTU under any Procurement Conditions, Supplier commits to have a supply chain process to ensure and document a reasonable inquiry into the country of origin of the 3TG minerals incorporated into such Deliverables. If requested, Supplier will promptly provide information or representations that MTU reasonably believes are required to meet its conflict minerals compliance obligations.

This requirement must be flowed down to all of Supplier's sub-tier suppliers. If at any stage of manufacture or production it is determined by the Supplier or any of the Supplier's sub-tier suppliers that any conflict minerals were incorporated into the Deliverables being delivered to MTU and originated in a covered country, the Supplier must provide a listing of the conflict mineral(s) and original covered country.

**34. COMPLIANCE WITH LAWS**

34.1. Supplier will comply with Fair Labor Standards Act of June 30, 1938 (USC 201-209) as amended, Occupational Safety and Health Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Immigration Reform and Controls Act, Family and Medical Leave Act, 29 CFR part 471, appendix A to subpart A, pertaining to employee rights under federal labor laws, applicable rules, and regulations cited in 10 CFR 1040, and any and all other federal, state, and local laws, statutes, ordinances, rules, regulations, codes, orders, and/or programs, including but not limited to identification and procurement of required permits, certificates, approvals and inspections, labor and employment obligations, affirmative action, wage and hour laws, and any other laws which subsequently become applicable under the Procurement Conditions, or under the laws of the state in which the Deliverables are utilized.

**35. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION**

35.1. This Order incorporates by reference: (a) all provisions of 41 C.F.R.60-1.4, as amended, pertaining to the equal opportunity clause in government contracts; (b) all provisions of 41 C.F.R.60-300.5(a), as amended, pertaining to affirmative action for veterans; and (c) all provisions of 41 C. F. R. 60-741.5(a), as amended, pertaining to the affirmative action for individuals with disabilities. **Supplier and its subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a).** This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. **Supplier and its subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a).** This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action covered by prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Supplier certifies that it is in compliance with all applicable provisions of 41 C.F.R.60-1, including but not limited to: (a) developing and presently having in full force and effect a written affirmative action compliance program for each of its establishments as required by 41 C.F.R. 60-1.40, as amended; (b) filing EEO-1 Reports as required by 41 C.F.R. 60-1.7, as amended; and (c) neither maintaining segregated facilities nor permitting its employees to perform services at segregated facilities as prohibited by 41 C.F.R. 60-1.8, as amended. MTU requests that Supplier adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion, national origin, disability, or any other legally protected characteristic.

**36. IMPORTER SECURITY FILING**

36.1. To comply with Importer Security Filing (ISF) Requirements for ocean shipments to the United States, the following data elements shall be sent via electronic mail to the MTU Customs Compliance Office-US at [tradecompliance@rrpowersystems.com](mailto:tradecompliance@rrpowersystems.com) a minimum of three (3) business days prior to cargo lading: Automated Manifest System (AMS) bill of lading number (lowest level), vessel name, voyage number, cargo lading date, Supplier name and



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address, MTU's name & address, Importer of Record number, consignee number, manufacturer (Supplier) name and address, ship-to name and address, container stuffing location name and address, consolidator (stuffer) name and address, and country of origin, harmonized tariff number, and MTU part number of each invoice line item. The ISF pre-alert shall also include invoice(s) for the shipment.

**37. DUTY-FREE IMPORT**

37.1. If a United States (US)-located Supplier intends to procure any materials from offshore (non-US) concerns, and to obtain duty free import under MTU's prime contract, Supplier must obtain permission from MTU and advise MTU, in writing, of Supplier's offshore order number and value.

**38. C-TPAT**

38.1. Supplier will ensure adherence to the security criteria of the Customs-Trade Partnership Against Terrorism (C-TPAT) program of the United States Customs & Border Protection including but not limited to business partner selection, container and trailer security, physical access controls, personnel security, procedural security, physical security, information technology security, and security training and threat awareness, unless otherwise prohibited by law. Detailed C-TPAT minimum security criteria are available at <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/security-criteria>. Supplier will provide a security questionnaire, access to facilities, and/or other written verification of adherence to these criteria upon request, including those of sub-tier suppliers or service providers chosen by the Supplier in provision of the Deliverables. Supplier will notify MTU immediately of any breach of security in the supply chain. Supplier acknowledges that failure to respond to requests in this clause and/or subsequent corrective actions will be reasonable grounds for termination of the Order in accordance with clause 7.

**39. SUPPLIER CONDUCT AND EXPORT CONTROL COMPLIANCE**

39.1. Anti-Bribery and Corruption Laws: "ABC Laws" as used in this clause means the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act 1977 (15 U.S.C. Section 78dd-1, et. seq.), as amended, and any other laws relating to anti-bribery and corruption matters applicable to the subject matter of this Agreement. "Affiliates" means, as to any person, any other person that is in Control of, is Controlled by, or is under common Control with, such person.

"Control" means the power, directly or indirectly, either to: (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such person; or (b) direct or cause the direction of the management and policies of such person, whether by contract or otherwise in relation to this Agreement and "Controls" and "Controlled" will be construed accordingly. "Inappropriate Inducement" as used in this clause means any payment or thing of value or any financial or other advantage to or for the use or benefit of: (a) any Government Official; or (b) any director, officer, employee, agent, or representative of any commercial organization or private individual; or (c) any other person, entity, or third party intermediary knowing or having reason to know that all or any portion of such payment, thing of value, or advantage would be offered, promised, paid or given to any of the persons described in this definition, for the purpose of influencing any act or decision of any such person, including a decision to do or omit to do any act in violation of the duty of such person in order to obtain or retain business, secure any improper advantage, or obtain any license, permit, approval, certificate, or clearance. "Government Official" as used in this clause means any person who would constitute either: (a) a "foreign public official" as defined in the UK Bribery Act 2010; or (b) a "foreign official" as defined in the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.), as amended.

Supplier represents, warrants, and undertakes to MTU that neither it nor its Affiliates, directors, employees, representatives, nor any other person acting on its or their behalf have engaged, or will engage, in any conduct which was or would be an offence under any ABC Laws (whether or not Supplier is subject to that ABC Law). Supplier represents, warrants, and undertakes to MTU that neither it nor its Affiliates, directors, employees, representatives, nor any other person acting on its or their behalf have authorized, offered, promised, paid or otherwise given, or will authorize, offer, promise, pay or otherwise give, any Inappropriate Inducement. Notwithstanding any other provision of this Agreement, any money due from MTU to Supplier under this Agreement, or in relation to its subject matter, will not be payable if Supplier has committed any actual or alleged breach of this clause 39.1 or 39.3 of this Agreement. In the event of an alleged breach, payment will only be payable once MTU has concluded that there has been no actual breach of this clause 39.1. Notwithstanding any other provision of this Agreement, MTU may, without prejudice to any of its rights under law, contract, or equity, terminate this Agreement immediately by written notice if Supplier is in breach of this clause 39.1, or if, at any time, the representations, warranties, and undertakings given by Supplier in this clause 39.1 would not be true and accurate in all respects.

39.2. Procurement Integrity: Supplier agrees to comply with the requirements of section 27 of the "Office of Federal Procurement Policy Act" (41 U.S.C. § 423), as amended by section 814 of Public Law 101-189, and with the implementing regulations contained in FAR 3.104, and agrees to indemnify MTU for any costs and liabilities incurred by MTU as a result of violations of the act or regulations by Supplier, its employees, its agents, its consultants, its suppliers or subcontractors, or their respective employees.

39.3. The Supplier will ensure that it and its personnel will comply with the Rolls-Royce Global Supplier Code of Conduct [http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/Handout\\_global\\_supplier\\_code\\_of\\_conduct\\_2016.pdf](http://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/Handout_global_supplier_code_of_conduct_2016.pdf), all relevant MTU provisions and codes of practice of MTU as specified by MTU and as set out on MTU website <http://www.mtu-online.com/mtu/purchasing/downloads/>, including without limit, its standard and site-specific security and health and safety requirements as applicable, copies of which are available on request. The Supplier agrees that MTU or their designated agent will have the right to enter the Supplier's facilities at reasonable times to inspect the facility,



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- Deliverables, materials, and any property of MTU. Such inspection will not constitute or imply acceptance of any Deliverables.
- 39.4. If Supplier performs any work on MTU's premises or uses MTU's property either on or off MTU's premises, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or property during the performance of such work. Supplier shall indemnify and protect MTU against all liabilities, claims, or demands for injuries or damage to any person or property arising out of the performance of work on or use of MTU's property, including without limitation attorney fees and costs.
- 39.5. Export Control: Supplier acknowledges that the Deliverables, any information, and/or related technology or technical data provided or received hereunder are subject to government laws, regulations, orders, and rules concerning export controls and economic and trade sanctions (collectively "Export Controlled Items"). Supplier agrees to comply with all applicable US export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. 4601-4623, as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the Export Administration Regulations, 15 C.F.R. 730-774 as these requirements (collectively the "ITAR/EAR Restrictions") relate to the Deliverables, Proprietary Information and/or MTU Property.
- 39.6. Supplier expressly represents and agrees that, in performing its obligations under this Agreement: (a) Supplier will strictly comply with all applicable laws, regulations, orders, and rules concerning export controls; and economic and trade sanctions as such may be amended from time to time; and (b) Supplier will not export or transfer, re-export, or re-transfer by any means, electronic or otherwise, any Export Controlled Item without complying in all respects with the applicable export control laws, regulations, orders, and rules as well as economic and trade sanctions legislation, codes of conduct, any relevant export authorization(s), guidelines, notices, and/or instructions in relation to any such export or transfer of the Export Controlled Items.
- 39.7. Supplier agrees to indemnify and hold the MTU harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of Supplier to comply with this clause 39.
- 40. BUY AMERICA(N)**
- 40.1. Supplier agrees to comply with all applicable domestic procurement and Buy America(n) rules and regulations as they relate to the Deliverables and agrees to cooperate with MTU with respect to verifying its compliance to any such applicable rules and regulations.
- 41. ELECTRONIC DATA INTERCHANGE**
- 41.1. If requested by MTU, Supplier will use commercially reasonable efforts to implement electronic data interchange or another electronic procurement system determined by MTU for order processing. All transactions shall be in accordance with MTU's user's manual for electronic data interchange or other electronic procurement system. Implementation of electronic data interchange and transactions by Supplier will be at Supplier's expense.
- 42. SUBCONTRACTORS**
- 42.1. The Supplier must obtain MTU's prior written consent before engaging or changing subcontractors or using third parties or temporary staff, unless such staff performs incidental functions. The Supplier shall otherwise impose the same obligations on any subcontractors as those it has assumed in its relationship with MTU. The Supplier shall furthermore be liable for the negligence of its subcontractors/suppliers as it would be for its own negligence.
- 43. FEDERAL ACQUISITION REGULATION (FAR)**
- 43.1. If this order contains a U.S. Government Prime Contract Number, or if any of the items to be supplied under this order are to be used on a U.S. Government contract, the FAR and, if applicable, DFARS clauses listed in **MTU AMERICA INC. GENERAL TERMS AND CONDITIONS OF PURCHASE - FAR AND DFARS FLOW-DOWNS FOR U.S. GOVERNMENT CONTRACTS** (the "Flow-Downs"), where incorporated herein by reference and made part of these terms and conditions. **MTU AMERICA INC. GENERAL TERMS AND CONDITIONS OF PURCHASE - FAR AND DFARS FLOW-DOWNS FOR U.S. GOVERNMENT CONTRACTS** can be viewed and downloaded from the MTU website at <http://www.mtu-online.com/mtu/purchasing/downloads/?L=15>. Unless specified otherwise, the term "Contractor" will mean "Seller," the term "Contract" will mean "Order," and the term "subcontractor" will mean Seller's subcontractors. Seller agrees to negotiate with Buyer to incorporate additional provisions beyond those identified in the Flow-Downs or to change provisions as Buyer reasonably deems necessary to comply with the applicable government contract. Seller shall accept mandatory flow-down clauses at no additional cost to Buyer.