

## **GENERAL CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES (Rev0)**

ANY TERMS AND CONDITIONS PROPOSED IN THE SELLER'S ACCEPTANCE OR IN ANY ACKNOWLEDGEMENT, INVOICE, OR OTHER FORM OF THE SELLER THAT ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS HEREIN ARE HEREBY REJECTED. SUCH TERMS AND CONDITIONS SHALL NOT APPLY TO THE CONTRACT UNLESS ACKNOWLEDGED BY A WRITTEN INSTRUMENT EXECUTED BY AUTHORISED REPRESENTATIVES OF THE BUYER AND THE SELLER. DESPATCH OR DELIVERY OF THE GOODS BY THE SELLER TO THE BUYER SHALL BE DEEMED CONCLUSIVE EVIDENCE OF THE SELLER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

THE BUYER SHALL BE ENTITLED TO UNILATERALLY AMEND THE TERMS AND CONDITIONS OF THESE CONDITIONS AND ALL SUCH AMENDMENTS SHALL APPLY TO CONTRACTS ENTERED INTO AFTER SAID AMENDMENTS.

### **1. DEFINITIONS**

(a) "Buyer" shall mean VT San Antonio Aerospace, Inc. ("VT SAA") which expression shall include its successors and permitted assigns.

(b) "Contract" shall mean the agreement entered into between the Buyer and the Seller for the purchase of the Goods and/or Services. The terms and conditions of the Contract shall comprise the terms in the Buyer's purchase order, the terms and conditions herein and all specifications, plans, drawings, patterns, samples or other documents or conditions which may be incorporated by contract.

(c) "Contract Price" shall mean the price payable to the Seller for the Goods and/or Services.

(d) "Goods" shall mean the Goods described in the Contract which the Seller is required under the Contract to supply.

(e) "Seller" shall mean the person, firm or corporation who by the Contract undertakes to supply the Goods or to render such other Services as may be required by the Contract which expression shall include its successors and permitted assigns.

(f) "Services" shall mean the Services described in the Contract which the Seller is required under the Contract to perform.

### **2. ESTABLISHMENT OF THE CONTRACT**

If the Seller fails to accept the purchase order for any reason whatsoever, the shipment by the Seller of any Goods or the furnishing or commencement of any Services ordered, or the acceptance of any

payment by the Seller hereunder or any other conduct by the Seller that recognizes the existence of a contract pertaining to the subject matter herein, may, at the Buyer's election, be treated as an unqualified acceptance by the Seller of the purchase order and all terms and conditions herein.

### **3. VARIATIONS**

Subject to Clause 13, no variation, amendment or addition will apply to the Contract unless expressly agreed upon in writing and signed by the parties' respective authorized representatives.

### **4. QUALITY, STANDARD AND DESCRIPTION**

(a) Subject to Clauses 9 and 11, the Goods shall:

- (i) be new and conform in all respects with the specifications and other requirements or descriptions stated in the Contract,
- (ii) be of sound materials, design and workmanship,
- (iii) be equal in all respects to the samples, patterns or specifications provided or given by either party,
- (iv) be capable of any standard of performance specified in the Contract,
- (v) if the purpose for which they are required is indicated in the Contract either expressly or by implication be fit for that purpose,
- (vi) be of satisfactory quality.

(b) The Services shall be performed using all due care and diligence, and in accordance with the turnaround time specified. The Services shall be deemed completed only if they meet all requirements, including the Buyer's Customers' requirements, and all applicable acceptance tests have been successfully completed under the Contract.

(c) All documents, records, test reports, etc, relating to the production of the goods must be retained on file for a period of not less than five (5) years.

### **5. INSPECTION AND TESTING**

(a) Before dispatching the Goods, the Seller shall carefully inspect and test them for compliance with the Contract. The Seller shall, if requested by the Buyer, give the Buyer reasonable notice of such tests and the Buyer shall be entitled to be represented thereat. The Seller shall also, at the request of the Buyer, supply to the Buyer a copy of the Seller's test sheets certified by the Seller to be a true copy.

(b) Where inspection of any of the Goods, whether completed or in the course of production, is required by the Buyer, the Seller shall give the Buyer full and free access to the Seller's works as and when required for that purpose and the Seller shall give the Buyer all facilities and applicable records, at any level of the supply chain involved in the order, as may be required therefor, at no cost to the Buyer. Where necessary, this free access shall also be extended to the Buyer's Customers and any applicable Regulatory Authorities or Agencies.

(c) If as a result of any inspection or test under sub-clause (a) or (b) the Buyer's representative is of the reasonable opinion that the Goods do not comply with the Contract or are unlikely on completion

of manufacture or processing so as to comply he may inform the Seller accordingly in writing and the Seller shall forthwith take such steps as may be necessary to ensure such compliance.

## **6. DELIVERY AND PACKING**

(a) The Seller shall deliver the Goods to the Buyer in the manner and at the place and time specified in the Contract. The Seller shall also comply with any additional instructions with respect to the Goods which the Buyer may give from time to time and any additional costs incurred by the Seller in complying with such instructions may be added to the Contract Price upon the Buyer's approval in writing.

(b) The Seller shall, at its own cost, ensure that the Goods are adequately packed for rough handling so as to ensure that they reach the Buyer intact and undamaged. In addition, the Seller shall ensure that the Goods are packed in such a manner that they are suitable for export to and storage in the tropics and are protected from deterioration during their transit until their delivery to the Buyer. Any other requirements on packing explicitly specified in the Contract shall be complied with by the Seller. Any packages containing dangerous or hazardous Goods shall be packed and marked in accordance with the best international commercial practice and all applicable laws and regulations.

(c) The Buyer's signature or stamp given on any delivery note or other documentation presented for signature in connection with delivery of the Goods is not evidence that the correct quantity of Goods has been delivered or that the Goods delivered are in good condition or of the correct quality but is only evidence of the number of packages received.

(d) Subject to any provision to the contrary in the Contract, "INCOTERMS 2000" (Publication No. 560 of the International Chamber of Commerce) shall be deemed to be incorporated into and shall form an integral part of the Contract.

## **7. PASSING OF PROPERTY AND RISK OF LOSS OR DAMAGE**

(a) Risk of loss or damage to the Goods shall pass to the Buyer at the time of acceptance by the Buyer of the Goods.

(b) Title in the Goods shall pass to the Buyer upon delivery to the Buyer at the destination specified in the Contract, unless payment for the Goods is made prior to delivery, in which case title thereto shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **8. TIME OF ESSENCE OF CONTRACT**

Time shall be of the essence of the Contract, both as regards the dates and periods mentioned and as regards any dates and/or periods which may be substituted for them in accordance with this Contract and by agreement in writing between the Buyer and the Seller.

## **9. REJECTION OF THE GOODS AND/OR SERVICES**

The Buyer shall have the right (without liability and in addition to its other rights and remedies under the Contract or otherwise) to reject the Goods or refuse acceptance of the Goods and/or Services if any of the same is found not to be in accordance with the Contract or if the Seller fails to deliver the

Goods and/or Services within the time specified. In the case of Goods, upon such rejection, the Seller shall arrange for the return of the Goods to the Seller, at the Seller's risk and expense, and the Seller shall return to the Buyer the Contract Price and reimburse the Buyer for all freight, insurance and other incidental costs incurred by the Buyer in connection with the purchase of the Goods. In the case of Services which do not comply with all the requirements of the Contract, the Buyer shall be entitled to terminate the Contract under the provisions of clause 21 herein. The Buyer shall also have the right to purchase the Goods and/or Services or substitutes thereof from alternative sources and the Seller shall reimburse the Buyer, upon demand, all additional costs incurred by the Buyer in obtaining the Goods and/or Services or substitutes thereof.

#### **10. LIQUIDATED DAMAGES**

Without prejudice to the Buyer's other rights and remedies, if the Goods or any part thereof or the Services are not delivered or performed within the time(s) specified in the Contract or any extension thereof as may be granted by the Buyer, the Parties agree that the Buyer may recover from the Seller, as genuine pre-estimated losses, damages calculated based on half per cent ( $\frac{1}{2}\%$ ) of the Contract Price subject to delay for each week or any part thereof which may elapse between the time(s) specified in the Contract and the actual date of delivery or performance subject to a maximum of ten per cent (10%) of the value of Goods or Services so delayed. The Buyer may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies in the Buyer's hands due or which may become due to the Seller. The payment or deduction of such damages shall not relieve the Seller from its obligations to complete the delivery or performance of the Goods or Services, or from any other of its obligations or liabilities under the Contract. If any sum payable under this Clause is not paid within 15 calendar days after the due date then (without prejudice to the Buyer's other rights and remedies at law or otherwise) the Buyer reserves the right to charge interest on such sum on a day-to-day basis (as well after as before any judgement) from the due date to the date of payment (both dates inclusive) at the rate of two per cent (2%) per month or part thereof compounded.

#### **11. WARRANTY**

(a) The Seller warrants that the Goods and Services and any part thereof will be of satisfactory quality and free from any defect in manufacture or any defect arising out of design, materials or workmanship, assembly or installation for a period of one (1) year from the date of acceptance of the Goods or Services by the Buyer (hereinafter referred to as "the Warranty Period").

(b) Where during the Warranty Period the Goods or any part or unit thereof is found by the Buyer to be defective, the Seller shall at the written request of the Buyer, replace the same at the risk and expense (including transport costs and other incidental charges) of the Seller or if the Buyer agrees, make good or repair the same at the risk and expense (including transport costs and other incidental charges) of the Seller within 60 days from the date of the written demand from the Buyer to replace, make good or repair the same. The Goods or part or unit so replaced or repaired being then subject to the warranty for a further period of one (1) year from the date of receipt by the Buyer of the Goods or part of unit so replaced or repaired. If the Seller fails to make good or repair the Goods as stated herein, the Buyer reserves the right without prejudice to its other rights under the Contract or otherwise to buy such defective Goods from alternative sources or have the Goods repaired at alternative sources and all additional costs incurred thereby shall be recoverable from the Seller.

(c) The Seller warrants that it will select and furnish personnel experienced and skilled in the type of work they are to perform under the Contract and that the Services to be performed under the Contract will be performed with due care and diligence and in a workmanlike manner within the turnaround time specified by the Buyer and in accordance with the Buyer's requirements. In the event the Services or part thereof do not conform to the requirements under the Contract, the Seller shall forthwith re-perform the Services. Until such time as the defective Services are re-performed to the satisfaction of the Buyer, the Buyer shall not be obliged to make payment therefor or, if payment has already been made, the Seller shall refund to the Buyer all sums paid. Any additional or incidental costs related to the re-performance of the Services or part thereof shall be borne solely by the Seller.

## **12. PAYMENT**

(a) The Contract Price shall be payable by the Buyer within thirty (30) days or any further period which may be mutually agreed by the parties in writing upon the Buyer's receipt of the Seller's correct invoice (which shall be in duplicate) together with all supporting documents as may be required under the Contract.

(b) Invoices must be issued in the name of the Seller. If the Buyer receives an invoice from another entity (whether related to the Seller or not), the Buyer shall be entitled to reject all such invoices as improper. If the Seller insists on payment for improper invoices, such action shall be deemed to be a breach of the Contract and all remedies for such breach shall then be available to the Buyer.

(c) In the event the Seller wishes the Buyer to make payment of the Contract Price to a party other than the Seller, the Seller shall seek the prior written consent of the Buyer pursuant to clause 20 herein.

## **13. ALTERATIONS OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES**

After acceptance of the Contract, the Seller shall not alter the specifications, plans, drawings, patterns or samples of any part of the Goods and/or Services unless directed by or with the prior written agreement of the Buyer, but the Buyer reserves the right to alter from time to time the specifications, plans, drawings, patterns and samples as from the date specified by the Buyer and the Goods and/or Services shall thereafter be in accordance with the specifications, plans, drawings, patterns and samples as so altered. In the event that such alteration(s), directed by the Buyer, result in changes to costs or time of delivery, these changes shall be agreed to between the Buyer and the Seller. In all other respects, the Contract shall remain unaltered.

## **14. FORCE MAJEURE**

Neither party shall be responsible for any failure or delay in complying with its obligations contained in the Contract where such failure or delay is caused by any riot, civil commotion, strike, lockout, fire, war, act of foreign enemies or any event beyond the reasonable control of and not due to the negligence of, or default by, the party affected. The party affected shall immediately inform the other party in writing of the said failure or delay and the event relied upon for such failure or delay. The affected party shall for the duration of such event be relieved of such obligation under the Contract as is affected by such event provided that the Contract shall remain in force with regard to those obligations under the Contract which are not affected by such event and the affected party shall

resume the performance of its obligations affected upon the cessation of such event. If any of the events mentioned above continues for more than six (6) consecutive months, the Buyer reserves the right to terminate the Contract as a whole or in respect of the Goods or Services not delivered or performed as at the date of termination, without being liable for any damages or losses incurred by the Seller.

#### **15. INDEPENDENT CONTRACTOR**

Nothing in the Contract shall be construed to create a relationship of employer and employee or partnership between the Buyer and the Seller. The Seller shall at all times be deemed to be an independent contractor.

#### **16. COMPLIANCE WITH LAWS AND PAYMENT OF TAXES**

The Seller shall be responsible for compliance with all applicable laws including all applicable import and export customs regulations and formalities. The Seller undertakes to pay or reimburse the Buyer for the payment of all fees, levies, duties and taxes (including sales, use or consumption taxes, goods and services tax, withholding tax, value added tax and taxes incurred and/or payable according to and/or under the relevant laws) and the application to the relevant authorities for any required licenses and any authorizations as a result of the sale and importation of the Goods or Services.

#### **17. INTELLECTUAL PROPERTY RIGHTS**

The Seller warrants that neither the sale nor the use of the Goods and/or Services nor the performance of the Contract will infringe any patent, trademark, registered design or other industrial or intellectual property rights. The Seller shall indemnify the Buyer from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement as aforesaid, and shall at its own expense defend or (at the Buyer's option) assist in the defense of any proceedings which may be brought in that connection.

#### **18. CONFIDENTIALITY**

Except with the consent of the Buyer in writing, the Seller shall not disclose the Contract or any provision thereof or any specification, plan, drawing, pattern, sample or any information issued or furnished by or on behalf of the Buyer in connection therewith, to any person other than a person employed by the Seller in the carrying out of the Contract. The disclosure to any such employee of the Seller shall be made in confidence and on a "need to know" basis. The Seller shall ensure that such of its employee(s) is/are bound by the terms of this Clause. Except with the consent in writing from the Buyer, the Seller shall not make use of any information mentioned herein supplied by the Buyer for the purposes of the Contract for any other purpose other than the performance of its obligations under the Contract. All specifications, plans, drawings, patterns or samples mentioned herein shall remain the property of the Buyer and shall be returned to the Buyer (together with all copies made) immediately upon termination or completion of the Contract.

#### **19. PROPERTY OF THE BUYER**

All tooling, equipment or materials furnished to the Seller by the Buyer or paid for or partially paid for by the Buyer and any replacement thereof, or any materials affixed thereto shall at all times remain the property of the Buyer and the Seller shall not use the same for any purpose other than for the

fulfilment of its obligations under the Contract. Such property of the Buyer shall be held at the Seller's risk when the same is in the Seller's custody and control.

## **20. ASSIGNMENT AND SUB-CONTRACTING**

The Seller shall not assign or transfer the Contract and any rights or obligations therein, including any rights to receive payment, to any person, firm or corporation, without the prior written approval of the Buyer. The Seller shall not, without the prior written consent of the Buyer, subcontract the Contract or any part thereof other than for materials, minor details or for any part of the Goods of which the manufacturers are named in the specifications. The Seller is at all times responsible for ensuring compliance with all requirements of the Contract, including in relation to all goods and services supplied by its sub-contractors. Any consent given by the Buyer to the Seller to sub-contract the Contract or any part thereof shall not relieve the Seller from any of its obligations under the Contract. A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **21. TERMINATION**

(a) The Buyer shall be entitled forthwith to terminate the Contract by notice in writing to the Seller:

- (i) if the Seller commits any breach of any of the provisions of this Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice from the Buyer requiring it to be remedied; or
- (ii) the Seller fails to deliver the Goods or perform the Services within the turnaround time or delivery time specified by the Buyer; or
- (iii) if the Seller suspends or discontinues its business or sells or otherwise disposes of all or a substantial part of its assets which materially affects its financial position; or
- (iv) if the Seller consents to the appointment of a receiver, trustee, liquidator or similar officer of itself or of all or a substantial part of its assets, or admits in writing its insolvency, or bankruptcy or its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors, or files a petition of bankruptcy, or (being insolvent) seeks relief under the provisions of any bankruptcy or other similar law which provides for the protection, reorganization or winding up of insolvent corporation (other than for the purpose of amalgamation or reconstruction); or
- (v) if the Seller ceases, or threatens to cease, to carry on business; or
- (vi) if anything analogous to any of the foregoing under the laws of any jurisdiction occurs in relation to the Seller.

(b) The rights to terminate this Contract given by this Clause 21 shall not prejudice any other right or remedy of the Buyer in respect of the breach concerned or any other breach.

(c) Notwithstanding anything contained herein, the Buyer shall, upon termination of the Contract, be entitled to purchase the Goods or any substitutes thereof from alternative sources and the Seller shall be liable for any loss and the amount of any additional costs incurred. Further, upon termination of a contract for Services, the Seller shall refund to the Buyer the full Contract Price and any other incidental costs incurred by the Buyer in obtaining the Services.

## **22. REMEDIES**

No remedy in the Contract is intended to be exclusive, but each shall be cumulative and in addition to any other legal remedy available to the Buyer, whether in law or equity.

## **23. LIMITATION OF LIABILITY**

Other than the Contract Price or any other charges which may be agreed to in writing between the Buyer and the Seller, the Buyer will not be responsible in any way to the Seller or any third party for any loss, damage, claim or demand, including special, indirect, consequential and incidental losses or damages (including without limitation any loss of profits or economic loss), arising out of or resulting from contractual, tortious (including negligence) or other actions or obligations of the parties.

## **24. INSURANCE AND INDEMNITY**

(a) The Seller shall have in effect and maintain, at its expense, the following insurance:

- (i) Workmen's Compensation insurance including employer's liability at common law to cover all workmen engaged to manufacture or process the Goods under the Contract; and
- (ii) Comprehensive public liability insurance customarily carried by the Seller in the normal course of its business to cover bodily injury or death or damage to property.

(b) The Buyer may require the Seller to furnish the Buyer with copies of the insurance policies required to be carried and maintained under this clause, evidencing that such policies are in full force and effect and the Seller shall furnish the same upon such request by the Buyer. The Seller shall not be relieved of any of its obligations under the Contract at common law or, pursuant to any statute, rule, regulation or other enactment by virtue of the taking out or any insurance as herein provided.

(c) If the Seller subcontracts any part of the Contract to provide the Goods, the Seller shall cause the Comprehensive public liability policy required under this clause to be endorsed to cover such subcontractor, ensure that such subcontractor maintains current Workmen's Compensation policies in respect of the subcontractor's workmen, including employer's liability at common law, before the subcontractor commence performance of the subcontract to provide the Goods and shall bind the subcontractor to a similar insurance clause as the one contained herein.

(d) If in the course of the use or operation of the Goods and/or Services of any part thereof, damage to or loss of property occurs or death or personal injury is caused to any person and it is shown that such damage, death or injury is caused by or attributable to the defective workmanship or negligence on the part of the Seller in the manufacture or delivery of the Supplies and/or Services or any part thereof or sub-standard materials used in the manufacture or packaging, the Seller shall indemnify the Buyer against any claim, liabilities or damages arising therefrom and all costs and expenses incurred thereby.

(e) Without prejudice to the foregoing, in the event of the Buyer (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Seller in respect of any tort whatsoever committed by the Buyer, its officers



or agents, the Seller shall indemnify the Buyer, its officers or departments against such claim and any costs, charges and expenses in respect thereof.

## **25. CONFLICT OF INTEREST**

The Seller shall exercise reasonable care and diligence during the term of the Contract to prevent any action or condition which could result in a conflict of interest with those of the Buyer. This obligation shall apply to the activities of the employees and agents of the Seller in their relations with the employees and the families of the Buyer, their representatives, vendors, sub-contractors and third parties. The Seller's compliance with this requirement shall include but shall not be limited to establishing precautions to prevent the other party and the Seller's employees or agents from making receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration for the purpose of influencing individuals to act contrary to the Buyer's interest. The Seller shall promptly notify the Buyer of the identity of any of its representatives or employees who is known in any way to have a substantial interest in the business or the financing thereof, failing which the Buyer shall be entitled to terminate the Contract without any liability whatsoever.

## **26. BUSINESS ETHICS**

The Seller shall:

- (i) Not take any action that would subject the Buyer to liability or penalty under any laws, regulations or decrees of any government authority.
- (ii) Maintain throughout the term of the Contract such business standards, procedures, and controls as are necessary to avoid any adverse impact on the interest of the Buyer.
- (iii) Ensure that all invoices, financial settlements, reports and billings to the Buyer reflect properly the facts about all the activities and transactions handled for its account.
- (iv) Notify the Buyer promptly upon discovery of any instance when it has not complied with the requirements of the Contract. This includes the discovery of any nonconforming products used in the production of the goods ordered by the Buyer, and obtaining the Buyer's approval for nonconforming product disposition.
- (v) None of the above contained in this clause shall be deemed waived by the Buyer unless notified to the Seller by the Buyer's authorized representative in writing.

## **27. NOTICES**

Any notice to be served on either of the parties by the other shall be in English and in writing and shall be sent by prepaid recorded delivery or registered post or by telex or by facsimile and shall be deemed to have been received by the addressee within ten (10) days of posting or twenty four (24) hours if sent by telex to the correct telex number (with correct answerback), or if by facsimile to the correct facsimile number of the addressee.

## **28. CHOICE OF LAW AND ARBITRATION**

These General Conditions of Contract for the Purchase of Goods and Services, and each Contract, shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of laws rules. The Seller hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the United States District Court for the Western District of Texas, in any action or proceeding arising out of or relating to these General Conditions of Contract for the Purchase of Goods and Services and each Contract thereunder. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions.

### **29. ENTIRETY OF CONTRACT**

This Contract constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous negotiation, representations and agreements whether written or oral.

### **30. SEVERABILITY**

If any provision of this Contract is declared invalid by any tribunal or competent authority, then such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time and as so adjusted, shall be deemed a provision of this Contract as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted upon this Contract as though the provision had never been included, in either case, the remaining provisions of this Contract shall remain in full force and effect.

### **31. NO WAIVER OF RIGHTS**

The failure of any party to enforce at any time any of the provisions herein shall not be construed to be a waiver of such provisions or a waiver of the right of such party thereafter to enforce any such provisions. No waiver by a party of any right hereunder shall be deemed as a waiver of any other right.

### **32. HEADINGS**

The headings herein are for reference purposes only and shall not be taken into consideration in the interpretation or construction of the Contract.

### **33. VIENNA CONVENTION TO BE EXCLUDED**

The United Nations Convention on Contracts for the International Sales of Goods (Vienna, 1980) shall not apply to the Contract, and all provisions thereof, expressed, implied or otherwise, which may or will have any effect on any of the terms and conditions herein are hereby expressly excluded.