



**CMC ELECTRONICS AURORA, INC.**

84 N. Dugan Rd  
Sugar Grove, IL60554

**ATTACHMENT A - GENERAL TERMS AND CONDITIONS**

**Clause 1. - Definitions**

1.1 The following definitions shall apply unless otherwise specifically stated: (1) "Items" means the Equipment together with Special Test equipment, and Services to be supplied to CMC.

(2) "Equipment" means the product(s) defined by the SCD to be supplied to CMC.

(3) "Special Test Equipment" means the special test equipment defined by the SCD to be supplied to CMC.

(4) "Services" means the services defined by the SOW to be supplied to CMC. Services may include, but not be limited to, the supply of data, engineering design and development effort, and repair and overhaul and other product support services.

(5) "Purchase Order" or "Order" means CMC's purchase order or other written or electronically transmitted communication identifying the Items to be purchased, their price and other information as required herein.

(6) "Specification Control Drawing" or "SCD" means the detailed functional requirements specification contained herein at Attachment B.

(7) "Statement of Work" or "SOW" means the Statement of Work contained herein at Attachment C.

(8) "Turn-Around-Time" or "TAT" means the time lapse, as specified in Attachment D, between receipt by the Seller of a defective Equipment and the receipt of the repaired or replaced Equipment by CMC.

1.2 The titles of the Clauses herein are inserted for convenience and shall not be construed to limit or modify the scope of any provision, or affect the interpretation thereof.

**Clause 2. -Purchase Order Administration/Acceptance**

2.1 Orders shall contain a description of the Items ordered, Item part numbers, delivery schedule, place of delivery, quantities, prices and shipping instructions. These general terms and conditions shall apply to and be deemed a part of all Orders issued under an LTA if applicable. The Parties agree that CMC's Purchase Order standard terms and conditions and any terms, conditions, provisions, requirements in Seller's quotation, acknowledgement, acceptance, or other communication to Seller modifying these general terms and conditions or the Order shall be deemed inapplicable, and in lieu thereof, these general terms and conditions shall govern all such Orders with the same force and effect as if they physically appeared thereon.

2.2 Seller shall promptly acknowledge receipt of each Order indicating either its acceptance or rejection thereof. All rejection notices shall set forth the reasons therefor, including the changes required by Seller for its acceptance of CMC's Order. CMC shall advise Seller whether such changes are accepted or rejected. If CMC accepts such changes by issuing an Order revision which provides for the changes requested by Seller, the Order, as so revised shall be deemed to be an accepted Order with respect to such Items.

2.3 Notwithstanding Clause 2.2 above, acceptance of an Order occurs (i) upon receipt by CMC of the acknowledgement copy signed by Seller, or (ii) upon Seller's commencement of performance, or (iii) five (5) working days from receipt by Seller of the Order (unless written rejection by Seller in accordance with Clause 2.2 is provided to CMC within the said five (5) days), whichever first occurs.

**Clause 3. - Specifications and responsibility for compliance**

The Items shall comply with the agreed drawings and specifications. Seller represents and warrants

- (i) it is competent to perform the work.
- (ii) it has the necessary knowledge, skill, experience, qualifications and equipment to perform the work.
- (iii) acknowledges that CMC has relied on and is entitled to rely on Seller, as an expert fully competent in all phases of the work under this Order. Seller shall deliver new parts and material only.
- (iv) he is aware of its contribution to product safety.
- (v) product conformity to CMC product and customer requirements.
- (vi) deviations from drawings, specifications, processes and/or procurement requirements are prohibited without a written

- (vii) deviation authorization provided by CMC. nonconformances discovered after delivery will be flagged to CMC within 24 hours of discovery. Detailed information regarding the description, severity, and impact of the nonconformance will be provided together with the information to allow affected product to be traced (lot number, date code, etc.).
- (viii) approval and/or review of any documents or data by CMC in no manner whatsoever limits or reduces Seller's obligations to comply with the requirements of the Order.

**Clause 4. -Changes**

4.1 CMC may at any time by written notice to Seller request changes within the general scope of an Order including but not limited to any one or more of the following: SCD, drawings, design, SOW, specifications, method of shipping, packaging, or packing, delivery schedule and place of delivery, and quantity.

4.2 Seller may submit proposals to CMC for changes to the Item. Any proposal for a change presented by the Seller shall be accompanied by a technical justification. CMC shall be entitled, in its absolute discretion, to refuse a request for a modification submitted by the Seller but shall not unreasonably refuse requested modifications.

4.3 Subject to mutual agreement with respect to Seller's change proposal under 4.6, the Seller agrees to incorporate and act upon any changes required by CMC.

4.5 If any such changes cause an increase or decrease in the cost of or time required for performance of the Order, a mutually agreed equitable adjustment shall be made in price, delivery schedule or both, and the Order shall be modified in writing accordingly.

4.6 Any claim by Seller for an adjustment must be made in writing, in the form of a complete change proposal, fully supported by factual information, to CMC within thirty (30) days of receipt of the change notice. Nothing in this clause shall excuse Seller from proceeding with performance of the Order as changed, without delay.

4.7 Seller shall not make any changes to the Items as to form, fit, reliability, function, weight, or any other specified requirements of an Order without obtaining CMC's prior written consent, which shall not unreasonably be withheld. This list shall also include changes to the place of manufacture, outsourcing of key operation or process and significant change in the supply chain for custom made parts.

**Clause 5. - Prices and Payment Terms**

Prices and payment terms are detailed in Attachment D. The prices are complete and include all levies and charges for preservation, packaging, packing, marking, labelling, storage, boxing and crating. Seller warrants that prices to be paid by CMC for the Items shall not exceed prices charged in similar circumstances to any other customer of Seller for items which are similar to the Items covered by this Order. If more favorable prices for the Items are offered to other purchasers in similar circumstances, such prices shall also be granted to CMC.

**Clause 6. - Delivery**

6.1 Time shall be of the essence. The Items shall be delivered strictly in accordance with the Order delivery schedule and early or partial shipments are not permitted unless expressly authorized in writing by CMC. CMC reserves the right to return any unauthorized early shipments at Seller's expense or to retain same at CMC's facilities at Seller's risk. Payment will be in accordance with the original or amended delivery schedule.

6.2 In the event Seller foresees or encounters difficulty in meeting the delivery requirements of an Order, it shall immediately notify CMC in writing giving pertinent details and a recovery schedule acceptable to CMC. This provision shall not be construed as a waiver by CMC of any performance requirements of an Order.

6.3 All Items shall be delivered to the delivery point specified in Attachment D. Title to the Items shall pass from Seller to CMC upon delivery.

**Clause 7. - Inspection and Acceptance**

7.1 All the Items shall be subject, at CMC's discretion, to inspection and/or

test by CMC, third-party representatives and/or CMC's customer(s) at all times and places and at any stage of production and, if at Seller's facilities, and/or at sub-tier facility, Seller without additional charge shall provide all reasonable facilities and assistance required for safe and convenient test and inspection. The right of inspection and test shall extend to representatives of the Federal Aviation Administration, Transport Canada and other equivalent government agencies, if applicable. The foregoing shall not relieve Seller of its obligation to make full and adequate test and inspection.

CMC may base acceptance or rejection of any or all the Items on inspection by sampling.

7.2 If inspection and/or test is to be performed at Seller's facilities Seller shall notify CMC of the date the Items are ready for inspection and/or test giving at least ten (10) working days' advance notice. If, on arriving at Seller's facilities, on the date given, the Items are not ready for such inspection/verification, Seller shall be liable for any cost incurred by CMC as a result of Seller's non-readiness.

7.3 If upon inspection and/or test any of the Items are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Order, CMC may, require in addition to its other rights (i) prompt correction or replacement thereof at Seller's expense, including any transportation charges, or (ii) rework or have reworked any such Items at Seller's expense for the purpose of having such Items brought into conformity with the requirements of the Order, or (iii) require Seller to make delivery of any such Items as is with a reduction in the price as may be mutually agreed, or (iv) recover, the cost incurred by CMC for screening and additional inspection CMC may, return the Items without any obligation to obtain authorization from Seller.

7.4 Final acceptance shall be at CMC within a reasonable time after delivery. Payment shall not constitute acceptance. Acceptance shall be conclusive except as regards latent defect, fraud, or such gross mistakes as amount to fraud.

7.5 In the event that the number of Items rejected by CMC or its customers exceeds the percentage specified in Attachment D of the total quantity of Items delivered during any 6-month period, the Seller shall submit to CMC for approval, within five days following notification of the situation, a schedule of corrective actions to be implemented within the shortest possible time. Failure to comply with this provision or failure to promptly correct the situation in accordance with the approved corrective action schedule, may at CMC's discretion be considered a cause for default under Clause 11, Termination for Default.

7.6 Nothing in this clause shall relieve Seller from any responsibility regarding defects or other failures to meet the requirements of the Order.

#### **Clause 8. - Quality Program Requirements**

All Items shall be designed, manufactured and supplied in accordance with the quality program requirements specified in the SOW and/or a quality program that meets the requirements of ISO 9001 or any other equivalent. Seller's facilities, manufacturing processes, quality control, and inspection system are subject to review, inspection and analysis by CMC, its representatives and its customers. Seller shall maintain all pertinent data and records respecting quality until ten (10) years after final payment under the Order.

The seller shall implement processes to secure adequate monitoring of its supply chain. Suppliers shall be adequately qualified, audited and monitored. Performance scorecard shall be periodically distributed (Quality, delivery,...), reviewed and associated objectives should be communicated.

#### **Clause 9. - Warranty**

9.1 Seller warrants that each Equipment (including any replacement Equipment or repaired Equipment shall (a) conform to and meet the SCD, specifications, drawings, descriptions and samples; (b) be merchantable, free from defects in material and workmanship; (c) be free from functional and design defects, including latent defects, and suitable for the purposes intended by CMC; and (d) be free from defects in the manufacturing processes. Such warranties shall survive inspection, test, acceptance of and payment for the Items and services and shall run to CMC, its successors, assigns and customers. Such warranties, together with Seller's service guarantees, if any, shall survive inspection, test, acceptance of and payment for the Items and shall run to CMC, its successors, assigns and customers and shall remain in full force and effect for 18 months after delivery to CMC or 12 months after delivery to the end customer whichever occurs first.

9.2 Seller shall repair or replace free of charge any defective Equipment within the Turn-Around-Time. Equipment or part thereof so replaced or repaired shall be subject to this warranty for the period of time specified in Attachment D. Seller upon receipt of a defective Equipment will prepare a failure analysis report and submit it to CMC within ten (10) days of receipt of the defective Equipment. Upon CMC's request, Seller shall provide a detailed report to CMC including the following information: cause(s) of failure, failure

analysis, a list of replaced parts when the fault is confirmed, the corrective action(s) taken and the corrective action(s) effectiveness, if applicable, and all pertinent data contributing to improving Item reliability.

9.3 The warranty provisions for Special Test Equipment shall be the same as stated in Clauses 9.1 and 9.2 for Equipment, except that the Special Test Equipment shall be warranted for the period of time specified in Attachment D.

#### **Clause 10. - Termination for Default**

10.1 CMC may, by written notice to Seller, terminate the whole or any part of the Order in any one of the following circumstances: (i) if Seller fails to make delivery of any of the Items within the time specified herein or any authorized extension thereof and further does not cure such failure within a period of forty-five (45) days; or (ii) if Seller fails to comply with any other provisions of the Order, and does not cure such failure within a period of forty-five (45) days after receipt of CMC's notice specifying such failure, or (iii) if Seller is in receivership, or becomes insolvent or bankrupt.

10.2 Upon the giving of the notice provided for in Clause 10.1, the Seller shall have no claim for further payment other than for amounts already due and as also provided in this clause but shall be liable to CMC for any advance amounts paid by CMC and for all losses and damages which may be suffered by CMC by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by CMC in procuring the Items from another party. Seller agrees to repay immediately to CMC the portion of any advance payment that is unliquidated at the date of the termination. Upon termination of the Order(s), CMC may require the Seller to deliver to CMC any completed parts of the Items which have not been delivered and accepted prior to the date of termination and any materials, parts, tooling, equipment or work-in-process which the Supplier has acquired or produced in the fulfillment of the Order(s). In such a case, CMC agrees to pay for the parts of the Items in accordance with the prices established for the Items in the Order and if no provisions exist in the Order for the materials, parts, tooling, equipment used to produce the Items or work-in-process, CMC agrees to pay a reasonable price to be agreed, Seller shall continue performance of the Order to the extent not terminated under provisions of this clause.

10.3 Automatically upon termination of the Order pursuant to Clause 10.1 Seller hereby grants CMC license to manufacture that portion of tooling which is necessary to manufacture the Items and a world-wide, perpetual, unconditional, royalty free license (including the rights to further sublicense and/or to have manufactured by a third party) to Seller's proprietary information, processes, drawings and engineering and manufacturing data for the purpose of the manufacture, use, evolution, and support of the Items. Seller shall assign to CMC rights to all existing agreements or contracts it may have with subcontractors and suppliers where the same is related to the evolution, manufacture, and support of the Items. Seller shall assist, (including the loan of suitability qualified and experienced employees), cooperate with, and provide CMC with all relevant information in respect of which the license has been granted.

#### **Clause 11. - Termination for Convenience**

11.1 CMC may at any time, by written notice to Seller, terminate for its convenience the Order in whole or in any part or parts thereof not completed. Upon receipt of such notice, Seller shall cease work (including the manufacture and procuring of materials, supplies, parts, accessories and equipment and subcontracts for the fulfillment of the Order) in accordance with and to the extent specified in such notice. CMC may, at any time or from time to time, give one or more additional notices with respect to any or all parts of an Order not terminated by any previous notice or notices.

11.2 In the event of any notice being given pursuant to this clause:

(i) All Items completed hereunder before the giving of such notice, and all Items completed thereafter in accordance with and to the extent specified in such notice, shall be paid for (subject to acceptance by CMC in accordance with the provisions of the Order) and Seller shall protect the Items in its possession in which CMC has or may acquire an interest.

(ii) In respect to the Items not completed hereunder before the receipt of such notice, not completed thereafter pursuant to such notice and not previously paid for, Seller shall be entitled to reimbursement of costs necessarily incurred by Seller thereon and to receive in addition an amount representing a fair and reasonable profit in respect to work done thereon.

(iii) No payment and/or reimbursement shall be made for Items whether raw or in the course of manufacture or manufactured, which have been or may be rejected after inspection as not complying with the terms and conditions of the Order.

(iv) In no case shall Seller be entitled to any amount which taken together with any amounts paid or due to Seller under the Order, would exceed the total amount payable for the Items to be supplied under the Order.

(v) The Items in process, in respect of which amount is payable to Seller as provided under this clause, shall be delivered to CMC, but the Items so delivered shall in no case be in excess of what would have been required for performing the Order in full if no notice of termination had been given.

(vi) Seller shall have no claim for damages of any kind including but not limited to compensation, loss of revenue or profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by CMC pursuant to the provisions of this clause except and to the extent expressly provided in this clause.

(vii) Seller agrees that if a claim is filed as provided in this clause, Seller's books and records and its facilities shall at all reasonable times be subject to inspection and audit by an authorized representative of CMC.

11.3 Seller agrees that it shall exclude from any claims hereunder and shall not be entitled to reimbursement for any Items or parts thereof which are:

- (i) standard products or parts which it normally sells to customers; or
- (ii) Any parts which Seller uses in its normal operations or Seller could use in producing work for its other customers.

#### **Clause 12. - Force Majeure**

12.1 The Parties shall not be held responsible for the non fulfillment of their contractual obligations in the event of a case of Force Majeure, i.e. an unforeseeable, irresistible, unavoidable event beyond the control of the Party suffering the said event. The contractual obligations of the Party claiming the case of Force Majeure shall be suspended as from the date of notification, providing proof of the effectiveness of this event can be submitted in writing.

12.2 The Seller agrees to notify CMC of any case of Force Majeure, i.e. an unforeseeable, irresistible, event beyond the control of the Seller (not including, in particular, the non-obtaining or late obtaining of export licenses) occurring in its plants and/or in the plants of its suppliers or subcontractors, within three (3) working days following its awareness, to the extent that it prevents the Seller from fulfilling its contractual obligations.

12.3 Notwithstanding the foregoing, if delay in delivery of an Item exceeds one hundred twenty (120) days due to Force Majeure, CMC may terminate any or all Orders affected by the Force Majeure immediately upon notice to Seller, in which event, all obligations and liabilities of the Parties hereunder with respect to said Items will be deemed discharged and terminated. The Seller agrees to repay CMC the portion of any advance payment that is unliquidated at the date of the termination.

12.4 Any case of Force Majeure not notified in writing to CMC within the three (3) calendar days following its occurrence shall not confer to the Seller the right to use this clause.

#### **Clause 13. - Reserved**

#### **Clause 14. - Shipping, Preservation, Packaging, Packing, and Marking**

Seller shall ship in accordance with shipping instructions on the face of the Order or attachments thereto. All the Items must be suitably preserved, packaged, packed, marked and prepared for shipment in compliance with instructions or specifications mentioned in the Order and, in the absence of such instructions or specifications, in compliance with best commercial practice and carrier regulations. No charges will be paid by CMC for preservation, packaging, packing, marking or shipping unless stated in the Order. Packing sheets showing the Order number, item number and quantity must be included with each shipment. Each container must be marked to show the Order number. The container and Order numbers must be indicated on the bill of lading. CMC insures all incoming shipments; therefore, CMC will not pay for insurance charges claimed for by Seller.

#### **Clause 15. - Patent Protection and Indemnity**

Seller hereby agrees to defend, at its own expense, any and all claims, actions, suits or proceedings based on a claim that any Items furnished under the Order constitute an infringement of any patent, trademark, registered design or other intellectual property rights and to indemnify and save harmless CMC, its customers, and those for whom CMC may account to as agent in the purchase of said Items, both as to liabilities and damages, including costs and expenses, resulting from such claims, actions, suits or proceedings.

#### **Clause 16. - General Indemnity**

16.1 Seller holds harmless and indemnifies CMC, its directors, officers, agents and employees from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments including costs, attorneys' and witnesses' fees, and expenses occasioned wholly or in part by any act or omission of the Seller, its subcontractors, agents, or employees which arise out of or in connection with the performance of the obligations pursuant to the Order. Seller shall maintain and furnish CMC on request with copies of such public liability, property damage and contingent liability insurance as will protect CMC and CMC's customer(s) from said risks and from any claims under any applicable law or regulation or act.

16.2 EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR OTHER ECONOMIC LOSS OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR

OTHER SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS ORDER, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **Clause 17. - Confidentiality**

Each party shall protect and keep confidential any and all information provided by the other party with the same degree of care as it normally exercises to preserve its own proprietary information. Such information shall only be disclosed to those of its employees having a "need to know". Both parties shall use such information solely for the purpose of the Order. Any and all rights, including without restriction, any copyright, patent right or other intellectual property right, to such information shall remain with the disclosing party. Upon termination or expiration of the Order, the receiving party shall promptly return all information provided by the disclosing party. Seller shall not use CMC's name in any marketing activity without prior written consent of CMC.

#### **Clause 18. - Intellectual Property**

All technology, know how, processes, system controllers, software, designs, drawings, technical documentation, and data which are developed, invented, or discovered (collectively the "Foreground Technology") by Seller, or by any subcontractors of Seller, pursuant to the Order and which are paid for directly or indirectly by CMC shall become the sole and exclusive property of Seller.

#### **Clause 19. - Continued Supply**

19.1 The Seller acknowledges that the Items are supplied to the aerospace market. This market requires suppliers to provide support (i.e. manufacture and supply of new equipment and spares and provision of repair and support services) for so long as one aircraft fitted with the Items is service anywhere in the world. CMC has entered into this Order with Seller based on Seller's representation that it is able and willing to provide such support for its Items.

19.2 The Seller hereby undertakes to supply the Items, including spare parts and repair services for the Items to CMC and CMC's customers for so long as any aircraft fitted with the Items is in service anywhere in the world, at fair and reasonable prices to be agreed upon by the Parties at the time of such request.

19.3 Should the Seller discontinue the manufacture of the Items and spare parts and/or repair services for the Items the Seller shall notify CMC by written notice sufficiently in advance of such discontinuance to permit the purchase of Items and spares for the remaining period of this undertaking or, at the discretion of CMC, either make satisfactory arrangements with a third party acceptable to CMC, to establish a continuing source of the Items, spares and repair services or provide to CMC and/or its customer(s), at no charge, a non-exclusive, irrevocable, transferable, fully-paid and royalty-free license to manufacture and repair and have manufactured and/or repaired for its use Items and spares and provide copies of all drawings, technical information, specifications, manufacturing instructions, patterns, tooling and other things necessary or appropriate for the manufacture and repair of such Items and spares.

#### **Clause 20. - Duty to Proceed**

Except as expressly authorized in writing by CMC, no failure of Seller and CMC to reach any agreement provided for by the terms of the Order, or any dispute arising under or related to the Order shall excuse Seller from proceeding diligently with the Order as directed by CMC including delivery of Items and the performance of services.

#### **Clause 21. - Surviving Conditions**

Notwithstanding any termination of the Order, the Parties' obligations with respect to Clauses 3, 8, 9, 10.3, 13, 15, 16, 17, 18, 19, 25, 26.1, 26.4, 26.8 and 26.9 shall survive any such termination and shall bind the Parties, their successors, their permitted assigns, and their legal representatives.

#### **Clause 22. - Subcontracts**

The Order has been awarded to Seller based on Seller's representations that Seller will be performing all work required under the Order. Seller will not subcontract without CMC's prior written consent for the design, development or manufacture of the whole or any substantial portion of any Items ordered hereunder. Failure to comply with this provision may at CMC's discretion be considered a cause for default under Clause 10, Termination for Default.

#### **Clause 23. - Law Govering and Arbitration**

23.1 The Order shall be governed, construed and interpreted in accordance with the laws of the Illinois and specifically excludes the United Nations Convention on Contracts for the International Sale of Goods.

23.2 All differences or disputes between the Parties arising in connection



with the Order which cannot be settled by mutual agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules in the English language. The seat of arbitration shall be Montreal, Canada. The arbitrators shall not be empowered to award punitive or exemplary damages.

#### **Clause 24. - Non-Waiver and Invalidity**

24.1 Failure by either Party to enforce any provision herein shall neither constitute a waiver of such provision nor prejudice its right to enforce such provision at any subsequent time. Waiver of any provision shall only be deemed to have been made if expressed in writing by the Party granting such waiver.

24.2 The remedies of CMC under the Order are cumulative and are in addition to any other remedies provided by law.

#### **Clause 25. - Obsolescence**

25.1 For the purpose of this Clause, obsolescence ("Obsolescence") means either a part or parts (including but not limited to raw materials, components or software) of an Item, manufactured by Seller or by a third party, which has (have) been taken out of production and cannot be purchased on the market or spare parts which have been declared obsolete by an aviation authority note or a service bulletin.

25.2 The Seller agrees that, throughout the period of its obligations under Clause 19, Continued Supply, any Obsolescence of a part or parts (including but not limited to raw materials, components or software) of an Item shall immediately be resolved free of charge to CMC and/or its customers and that any costs resulting therefrom for CMC shall be borne by the Seller.

#### **Clause 26. - Delays**

26.1 If the Seller states that it cannot meet the agreed delivery schedule or that such a delay seems likely, the Seller must notify CMC in writing of the reason for the delay and the new delivery time.

26.2 When a delivery is delayed, CMC is entitled to liquidated damages without proving that the delay has caused damage or loss. The liquidated damages are one (1.0) per cent for each starting 7-day period by which the Seller exceeds the agreed contractual delivery time after a one

(1) week grace period. The liquidated damages are calculated from the price of delayed milestone(s), and the maximum penalty period is ten (10) weeks. CMC is entitled to deduct the liquidated damages from its payments to the Seller. CMC agrees to impose these liquidated damages on the Seller only if liquidated damages are imposed on CMC. These liquidated damages do not apply in case of proven force majeure. During the time Contract is accruing liquidated damages the Contract will not be terminated for default due to delay.

26.3 Excluding cases of negligence or gross negligence or willful act the liquidated damages will be in full and final satisfaction of the Seller's liability for delay. If the delay is caused by an act of negligence by the Seller, CMC is entitled to receive compensation from the Seller for the direct expenses and damages caused by the delay whenever they exceed the liquidated damages payment specified in Clause 27.2. However, the total of the liquidated damages and compensation must not exceed the price of the Product or component that forms the basis for delay penalty calculation. If the delay is due to gross negligence or willful act by the Seller, compensation shall be paid in full both for the direct and indirect costs and damage.

#### **Clause 27. - Export Regulations**

27.1 Seller shall comply with any law, regulation, order, or directive from any relevant authority governing or controlling the transfer, export, retransfer, reexport ("Export") of any Item or technology ("Export Regulations") including the FARS and DFARS as applicable. Seller shall, furthermore, inform CMC of any restriction or control applying to the Export of a given Item or technology prior to CMC having custody and control of such Item or technology, or as soon as possible after such restriction or control comes into force if it was not in force prior to CMC having custody and control of such Item or technology.

27.2 Seller shall declare to CMC if Items or technologies supplied are or become subject to the Export Administration Regulations ("EAR"), the International Traffic in Arms Regulations ("ITAR"), the Canadian Controlled Goods Program or any other Export Regulation, or if the transaction is or becomes subject to the Office of Foreign Assets Control Regulations ("OFAC"), as this legislation may be amended from time to time. In the case where Items or technologies are subject to any such control, Seller shall provide CMC with the Export classification number applicable to the Items or technologies at the time of the Order.

27.3 Seller shall obtain and renew any governmental export permit, license or similar authorization which may be required for the Export of any Item or

technology and relevant supporting data. Seller shall have no liability in the event that any governmental authority cancels or fails to issue or renew any export permit or authorization which may be required for the Export of any Item or technology and relevant supporting data, but solely to the extent that such refusal or cancellation («Export Permit Denial») was unforeseeable and not due to Seller's fault or negligence. In the event of an Export Permit Denial, Seller shall promptly notify CMC.

27.4 Without limiting the foregoing, in the event that an Item, a part or a technology thereof, is or becomes subject to ITAR or any other Munitions List requirements, Seller shall exhaust all reasonable means, to the extent that it is technically feasible and mutually agreeable by the Parties, to eliminate any resulting Export restriction, whether on the Item, the part or the technology, or the Aircraft itself, including by substituting the Item, the part or the technology with a commercial equivalent which is not subject to any such Export restriction. Seller shall not, however, file any Commodity Jurisdiction, or any similar application, to remove the Item from under any applicable Munitions List, without first consulting with CMC. Should the Seller be unable to eliminate the Export restriction, CMC shall not unreasonably deny Seller from filing a Commodity Jurisdiction or any similar application. If, following such consultation, the decision is taken to file such applications, Seller shall, with the cooperation of CMC, where Seller requests it, be responsible for the complete re2designation process, and shall, to the extent permissible under applicable laws and regulations, share with CMC any and all information related to CMC in support of such CMC – STC Purchase Rev. 04/2013 4 applications and address all reasonable concerns expressed by CMC regarding the redesignation process.

27.5 Should Seller be unable to eliminate Export restrictions that have subsequently become applicable as described in Clause 22.2, Seller and CMC shall negotiate a mutually agreeable resolution provided the coming into force of such Export restriction was unforeseeable and not due to Seller's fault or negligence. In the event of such restrictions coming into force, Seller shall promptly notify CMC.

#### **Clause 28 - Conflict Minerals**

In compliance with Dodd-Frank Act Section 1502, Seller agrees to SEC Reporting Requirements for Issuers Using Conflict Minerals. Conflict minerals are: columbite-tantalite (coltan), cassiterite, wolframite, and gold, which are used to finance conflict in the Democratic Republic of Congo or adjoining country.

#### **Clause 29. - Government Contracts**

29.1 If a Canadian Government Contract number appears on this Purchase Order, the Canadian Government Standard Acquisition Clauses and Conditions (SACC) Manual, as applicable, are incorporated herein by reference.

29.2 If this order is placed under a U.S Government prime Non-Commercial contract or Non-Commercial subcontract, CMC will promptly notify Seller of the Federal Acquisition Regulations (FAR) and the Department of Defense Supplemental to the FAR (DFARS) flow down provisions in effect on the date of this Purchase Order, unless otherwise specified, are applicable to and are incorporated by reference into this Order (in addition to any other incorporated terms and conditions.)

29.3 If this Order placed under a U.S Government prime Commercial contract or subcontract, CMC will promptly notify Seller of the Federal Acquisition Regulations (FAR) flow down provisions in effect on the date of this Purchase Order, unless otherwise specified, are applicable to and are incorporated by reference into this Order (in addition to any other incorporated terms and conditions.)

29.4 Supplier shall incorporate the applicable Canadian Government or U.S. Government clauses in each lower-tier subcontract placed in support of this Order.

29.5 In the event of a conflict between a provision in this document and CMC's Standard Terms and Conditions of Purchase, this document shall control to the extent permitted by law.

#### **Clause 30. – Business Conduct and Ethics**

30.1 By accepting this Purchase Order, Seller represents that it has not participated in any conduct in connection with the Purchase Order that violates CMC's Code of Business and Ethics, as published and made publicly available at <https://cmcelectronics.ca/About/CodeofConduct.aspx>, and Seller will adhere to CMC's Code of Business Conduct and Ethics or if available, Seller's version which is consistent with the CMC's Code of Business and Ethics.

30.2 Failure of Seller to comply with this clause may, at CMC's option, result in immediate termination for default hereunder, without provision for cure. Should Seller access CMC's premises in performance hereunder, Seller agrees to comply with and to not violate any code of conduct, and policies adopted by CMC including those related to security, health and safety.

30.3 If Seller has cause to believe that CMC or any employee or agent of

CMC has behaved improperly or unethically in connection with this Purchase Order, Seller shall report such behavior to CMC in accordance with the CMC's Code of Business Conduct and Ethics.

#### **Clause 31.–Flow down Requirements**

31.1 Seller shall flow down to their sub-tier suppliers, the applicable specifications, descriptions, requirements, key characteristics and all requirements in the Contract and/or this Purchase Order when required, including CMC's customer or regulatory requirements.

#### **Clause 32.- Miscellaneous**

32.1 Seller shall not, without the prior written consent of CMC, make any news release or public announcement concerning any part of the subject matter of the Order or its contents. The Seller shall not use, reproduce or imitate for any purpose whatsoever any of the registered trademarks of CMC or of CMC's customers, including their company names, associated logos and program names or logos associated with their aircraft, products or services, unless a prior written consent is given by CMC.

32.2 The Order, its performance or any interest herein, may not be assigned by Seller without CMC's prior written consent. CMC may at its discretion assign this Order and any rights thereunder (or any part thereof) to a third party.

32.3 All claims for money due, or to become due, from CMC shall be subject to deduction or set off by CMC by reason of any counterclaim arising out of this or any other transaction with Seller.

32.4 Should any provision of the Order be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal, and enforceable. Any such invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision corresponding as closely as possible to the intentions of the Parties as expressed in the invalid provision.

32.5 The Seller represents and covenants that no bribe, gift, benefit or other inducements has been or will be paid, given, promised or offered directly or indirectly to any official or employee of CMC or to a member of the family of such person with the view to influencing the entry into or the administration of the Order resulting therefrom.

32.6 It is agreed that the Order does not constitute either Party the agent or legal representative of the other Party for any purpose whatsoever. Neither Party is granted any right or authority to assume, or to create any obligation or responsibility, express or implied, on behalf of, or in the name of the other Party, or to bind the other Party in any manner or thing whatsoever.

32.7 The Seller acknowledges that the Order hereunder may be eligible for offset in the Seller's country. The Seller agrees to provide CMC all necessary support to obtain from the relevant offset authorities the optimum eligibility of this Order and the resulting offset credit to discharge the offset requirements CMC and/or its customers may have in the Seller's country.

32.8 Seller shall ensure that its personnel, including resident representatives, shall, when located in the premises of CMC, comply with any applicable regulations of CMC including but not limited to health, safety, security, environment and internal regulations.

32.9 Should CMC provide Seller, from time to time, with its forecasted internal production schedule requirements ("Forecast") for the Item, the Seller hereby acknowledges and agrees that the Forecast represents marketing information gathered from various sources, including CMC's customers, and as such is subject to change. It is agreed and understood by the Parties that these Forecasts are for planning purposes only and shall not be contractually binding on CMC in any event.

32.10 Should the conditions of supply of the Item or its variants entered into or to be entered into by the Seller with any other third party be globally more favorable to such other third party than the terms of this Order, the Seller undertakes, to the extent that such other conditions are more favorable, to immediately enter into negotiations with CMC in order to incorporate therein new terms and conditions which will be at least as favorable to CMC as those conditions entered into by the Seller with the other third party.

32.11 In the event that CMC receives a Government priority rating on any Order, CMC shall flow down such rating to Seller and Seller agrees to comply with such rating.

#### **Clause 33 – Compliance with Aviation Authorities**

33.1 If applicable, at the time of delivery thereof the Products sold, repaired or overhauled shall meet all applicable requirements of the Aviation Authorities such as but not limited to Transport Canada, the FAA, EASA or JCAB for operation by Buyer's customers in domestic and international airline transport service. Seller shall obtain all Aviation Authorities certificates which may be required for installation or operation by Buyer's customers.

## 34 - COUNTERFEIT PARTS PREVENTION AND NOTIFICATION

34.1 For purposes of this Order, (i) "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "suspect counterfeit electronic part" if visual inspection, testing, or other information provide reason to believe that the part may be a counterfeit part and (ii) "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

34.2 Seller represents and warrants that only new and authentic materials are used in the Items and that the Items delivered contain no Counterfeit Parts. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, unless expressly authorized in writing by CMC, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturer" (OEM) or Original Component Manufacturer" (OCM or through the OEM's/OCM's authorized distribution chain). Seller must make available to CMC, at CMC's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM.

34.3 Seller shall maintain a documented system (policy, procedure, or other documented approach) consistent AS5553, for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining suspect counterfeit electronic parts and counterfeit electronic parts, and taking corrective action.

34.4 Seller shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Order.

34.5 Should Seller become aware of a confirmed or suspect counterfeit part that, by any means, has been delivered to CMC, or acquired for this Order whether or not delivered to CMC, notification will be made as soon as possible but not later than seven (7) days of discovery to CMC. Seller will verify receipt of this notification by CMC. Additionally, for confirmed Counterfeit Parts, notification will also be made not later than 60 days after discovery to the Government-Industry Data Exchange Program (GIDEP).

34.6 Seller shall be liable for cost of counterfeit parts and suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

34.7 Seller shall quarantine suspect counterfeit electronic parts and counterfeit non-electronic parts, and make them available for investigation by appropriate government authorities.

34.8 Once the disposition is taken, all suspect counterfeit or counterfeit parts are to be permanently render as unusable and dispositioned for scrap to prevent re-entry in the supply chain.

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