

**METAL IMPROVEMENT COMPANY, LLC**  
**TERMS AND CONDITIONS OF PURCHASE**

**HEADINGS NOT CONTROLLING**

Headings and captions set forth in this order are for convenience of reference only and are not intended to, nor do they, alter the meaning, content or enforceability of any provision hereof. Where the contract requires, items stated in the plural herein shall be deemed to mean the singular and vice versa.

**ACCEPTANCE**

This order is for the purchase and sale of goods and services described on the face of this order (hereinafter "items"). Acceptance of this order shall be limited to the terms and conditions contained herein and incorporated herein by reference. This order shall be deemed accepted upon the return of the acknowledgment copy of this order or the commencement of performance by Seller. No terms and conditions offered by Seller in accepting this order or in any invoice or order acknowledgement pertaining to this order shall be binding on Buyer. No acceptance by Buyer of, or payment for, goods or services ordered hereunder shall be deemed a waiver of the preceding sentence or an acceptance of any additional or different terms contained in any acknowledgment, invoice or other form sent or delivered by Seller to Buyer. These terms and conditions constitute the entire agreement between the parties and no change or modification of this order shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer's procurement or purchasing office at Buyer's place of business issuing this order.

**PRICES AND PAYMENTS**

Unless otherwise provided on the face of this order, THE PRICES APPEARING HEREIN INCLUDE ALL PACKAGING, CRATING AND FEDERAL, STATE AND LOCAL TAXES, IF APPLICABLE, AND ARE FIRM FOR THE DELIVERY PERIOD SHOWN. Payment periods and cash discount periods will be computed from either the date of delivery or acceptance of the items ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of the order, whichever is later. The payment date will be delayed on a day-for-day basis for any item that is delivered later than called for by the schedule on the face of this order.

**INTERCHANGEABILITY**

All items purchased hereunder (or parts thereof) are to be completely interchangeable with items (or parts thereof) purchased from Seller previously by Buyer or Buyer's customer. To this end, all designs, processes or procedures used by Seller in supplying the items (or parts thereof) previously are to be used by Seller in supplying the items (or parts thereof) purchased herein. Any deviation to any of Seller's design, processes or procedures requires Buyer's prior written approval. Seller shall be liable for all of Buyer's costs associated with the discovery and retrofit of non-interchangeable items or parts thereof resulting from Seller's failure to comply with the requirements of this article.

**CONFLICTING PROVISIONS**

In the event of any conflict among the provisions of this order, the following order of precedence shall apply in interpreting this order:

(1) Provisions on the face of this Order, (2) Buyer's Special Conditions, (3) these General Terms and Conditions, (4) other documents (such as specifications and drawings) that are incorporated by reference in the Order.

**ASSIGNMENT**

Neither party shall assign these Conditions of Sale and any Purchase Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained. Notwithstanding the foregoing, Seller may assign this agreement to any entity controlled by or under common control of Curtiss-Wright Corporation.

**WAIVER**

Failure by Seller to assert all or any of its rights upon any breach of these Conditions of Sale shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

**INSPECTION**

Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all items are subject to final inspection and acceptance or rejection by Buyer at Buyer's facility. At all reasonable times, including the period of manufacture, Buyer, its customers, and/or representatives of the Federal Aviation Administration or other cognizant regulatory bodies may inspect and/or test the items to be furnished hereunder at the places where the work is being performed, including those of the Seller's suppliers, and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and test. Buyer may inspect 100% or a sample of all items or any lot of items at Buyer's option. In case any supplies, material or services are defective or otherwise not in conformity with Order requirements, Buyer may elect to terminate this Purchase Order for default or, without waiving any other remedies that may be provided by law, may (1) reject and return the supplies and material at Seller's expense for refund of invoice price or for correction or replacement, or (2) rework same to conform them to Order requirements and charge Seller the cost occasioned thereby, or (3) require that Seller re-perform non-conforming services and/or (4) equitably adjust the price. Seller shall provide and maintain a test and inspection system acceptable to Buyer and its customers, if required. Records of all inspection work by Seller shall be kept complete and available to Buyer and its customers during the performance hereof and for four (4) years after final payment by Buyer or for such longer period as may be specified elsewhere herein.

## **WARRANTY**

(a) Seller warrants that all goods, supplies or services delivered under this Order shall be merchantable, free from defects in material and workmanship, conform to specifications and drawings, and, to the extent that detailed designs have not been furnished by Buyer, be free from defects in design and suitable for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under any provision of this Order, including this Warranty.

(b) Seller's warranties hereunder shall run to Buyer, its successors, assigns, customers and users of its products and shall extend to any defect or nonconformity arising within three years after delivery to Buyer or two (2) years after first placed in use, whichever occurs first.

(c) With respect to items not in accordance with any such warranties, Buyer, without waiving any remedies provided by law and/or under this Order, may require Seller (1) to correct or replace items, or re-perform services at Seller's risk and expense or (2) to refund such portion of the Order price as is equitable under the circumstances. Items or material corrected or replaced shall be subject to the provisions of this Order in the same manner as those originally delivered hereunder. If Seller refuses or fails promptly to correct or replace such items, or to re-perform services when requested by Buyer, Buyer may, by contract or otherwise, correct or replace such items or procure substitute services and Seller agrees to reimburse Buyer for the costs incurred thereby.

## **DISCONTINUED AND/OR OBSOLETE COMPONENTS**

In the event that Seller receives notification from a last known vendor, or otherwise becomes aware that a component used in the performance of this Order has or will be discontinued, Seller shall notify the Buyer. Seller shall also propose corrective action, including either; a) an end-of-life buy of the component in sufficient quantities to fulfill the requirements of the contract; b) a compatible replacement component acceptable to Buyer; or c) a comparable redesign to replace the component. In any event, upon such notification, Buyer shall promptly review and, in Buyer's discretion, either accept or reject the corrective action.

## **CHANGES**

Buyer may, at any time, by a written change order, without notice to any sureties, make changes to any aspect of the Contract/Order and/or its performance, including but not limited to: (i) drawings, designs, specifications; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of services ordered, (v) the work or service schedules, and (vi) the amount of any Buyer furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule or both and this order shall be modified accordingly. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such change is received by Seller. If Seller considers that any conduct, statement or direction of any of Buyer's employees constitutes a change hereunder, Seller shall notify Buyer's Subcontract Administrator and take no action on the perceived change pending written approval of Buyer's Subcontract Administrator. Only Buyer's Subcontract Administrator has authority to approve a change. No amendment or change or any type to the Contract/Order shall be valid unless authorized in writing by Buyer's Subcontract Administrator under this provision. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance. Neither anything in this article nor a failure to agree on an equitable adjustment shall excuse Seller from proceeding with performance of this Contract/Order as changed.

Notwithstanding the above or any other provision of this Contract/Order, the Seller hereby agrees that no changes to the items that may be required in order to meet the specified performance requirements of this Contract/Order shall entitle the Seller to any adjustment in either price or delivery.

## **EXCUSABLE DELAYS**

Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform caused by the default of a supplier of the Seller at any lower-tier shall be excused only if it is beyond the control of both Seller and such supplier and without the fault or negligence of either and the items to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule; and provided further, that Seller furnishes prompt written notice to Buyer of the occurrence of any such cause that will or may delay Seller's performance. If delivery of any item is delayed by any excusable delay for more than three (3) months, Buyer may, without any additional extension, cancel all or part of any order with respect to the delayed product, and exercise any of its remedies hereunder or at common law.

## **INSURANCE**

Seller shall maintain and carry liability insurance which includes but is not limited to commercial general liability (including product liability and for services to be performed, completed operations liability) in a sum no less than \$5 million, automobile liability in a sum no less than \$5 million, workmen's compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million, with insurance carriers acceptable to Buyer. Seller will, if requested by Buyer, furnish certificates of insurance from its carrier(s) respecting the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Buyer from the carrier(s).

## **SPECIAL TOOLING**

1. With respect to items (i) for which any technical information, written, oral or otherwise has been supplied to Seller by or on behalf of Buyer; (ii) Seller has designed at Buyer's expense; or (iii) Seller has designed specifically to meet Buyer-furnished technical requirements (where (i)-(iii) are referred to collectively as "Designed Property"), Seller, in consideration of this Order and/or Buyer's furnishing of such Designed Property and/or funding therefor, shall not use, or assist any other person or entity in using such Designed Property or funding or tooling therefor to develop, distribute, offer to sell, or sell such Designed Property (or similar or substitute items or parts thereof) to anyone other than Buyer, either as production, spare, or repaired items, without Buyer's prior written consent. Seller shall not use the Designed Property, or permit any third party to use the Designed Property, to develop a product, service, or effort on behalf of anyone other than Buyer. Seller shall not use or disclose Designed Property, except in the performance of Orders for Buyer and, upon Buyer's request, Designed Property and all copies thereof shall be returned to Buyer. If Seller develops, distributes, offers to sell, or sells Designed Property (or similar or substitute items or parts thereof) or assists others in doing so to anyone other than Buyer, the burden shall be on Seller to establish that Designed Property and/or funding, technical information, or tooling therefor was not used by Seller.

2. Where Designed Property is furnished to Seller's suppliers or subcontractors for use in performance of Buyer's Orders, Seller shall insert the substance of this Article in all such Orders to Seller's suppliers and subcontractors.

## **TIME FOR DELIVERY**

Delivery of the items and related data and/or documentation and/or performance of required services in accordance with the schedule are a material requirement of this Order. **TIME IS OF THE ESSENCE.** Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's reasonable flow time. Seller will, at its expense, ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered for any reason other than Buyer's fault. Buyer reserves the right to reject all or any part of any delivery that varies from the quality or quantity authorized by Buyer for shipment. All items shall be packaged in accordance with Buyer's instructions or, if none are specified, in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. Items shipped in advance of Buyer's delivery schedule may be returned at Seller's expense. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier for transportation. Title and risk of loss to items shall pass to Buyer at the F.O.B. point specified on the face of this Order, unless earlier passed pursuant to other provisions of this Order. Buyer will have no liability for payment for items delivered to Buyer that are in excess of quantities specified in this Contract/Order and delivery schedules. Such items shall be subject to rejection and return at Seller's expense, including transportation both ways, or may be accepted by Buyer with the obligation for payment deferred until the agreed upon payment period after delivery should have been made pursuant to the delivery schedule.

## **PACKING/PACKAGING**

Seller shall mark, pack and ship all supplies in accordance with the requirements of the Order, any supplemental instructions of Buyer, and otherwise in compliance with transportation regulations and good commercial practice for protection and shipment, and shall secure the most advantageous transportation service and rates therewith. A master packing sheet in duplicate shall accompany each shipment. Packing sheets shall not show any prices. Buyer's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing sheets. Each container shall have plainly marked on its exterior the following: (1) Name of Seller (2) Name of Buyer (3) Order number (4) Quantity of Parts or Units in container (5) Part Number (6) Date of shipment (7) Bill of Lading Number (8) Packing Sheet Number (9) Shipping Container Number in Lot and (10) Number of Containers in Lot. Seller shall submit an invoice for each shipment against this Order which shall show the amount of material being shipped. Invoices shall be submitted in triplicate to Buyer's Accounts Payable Department. Bills of lading, express receipts, or other evidence of shipment containing the information required above shall be mailed to Buyer on date of shipment. The Purchase Order number and part number (including blueprint change letter), or where there is no part number, then a description of material, shall appear on all invoices, packing sheets, bills of lading, express receipts correspondence and other instruments in connection with this Order, and where Seller and shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment.

## **PROPERTY OF BUYER**

Unless otherwise provided in this order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Property other than material shall not be modified without the written consent of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as "Property of Curtiss-Wright Corporation" and shall be solely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this order, it shall be subject to inspection and removed by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller as and what directed by Buyer. Seller shall disclose the location of such property, prepare it for shipment, and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.

## **NEW MATERIAL**

Seller warrants that none of the items furnished under this order are surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this order.

## **DOCUMENTATION AND MANUALS**

All documentation, installation, maintenance, and operations manuals will be in English. The English version of any documentation installation, maintenance, and operations manuals shall be the controlling documents. . Any cost of translation shall be the Seller's responsibility.

## **INTELLECTUAL PROPERTY INDEMNITY**

Seller shall indemnify and save Buyer harmless from all losses, damage and liability which may be incurred on account of infringement or alleged infringement of any United States or foreign patent, or other claimed intellectual property right with respect to all items and services delivered under this Order, except for items manufactured by Seller pursuant to designs solely developed by Buyer and furnished to Seller by Buyer. Seller shall, at its own expense, settle or defend all suits, actions or claims against Buyer in which any such infringement is alleged, and if (i) a court of competent jurisdiction enters a final judgment of infringement by Buyer in any such suit, action, or claim and (ii) all appeals have been exhausted, Seller shall, at its own cost and expense, satisfy and discharge same. In the event that a court of competent jurisdiction enjoins Buyer from using, selling, or offering to items and services delivered under this Order, Seller shall at its expense and within thirty (30) days (a) procure for Buyer the right to continue using the items and services delivered under this Order (including obtaining a stay of the injunction); (b) replace the items and services delivered under this Order supplies with non-infringing alternatives; or (c) modify the items and services delivered under this Order so that they become non-infringing. The foregoing obligations shall apply to all claims asserted by third parties against Buyer, including patent infringement claims of the Government against Buyer, unless Government patent indemnity is elsewhere provided for in this Order.

## **INDEMNITY**

To the fullest extent allowed by law, Seller shall be responsible for any loss or damage of whatsoever kind or nature, whether arising before or after completion of the work hereunder, in any manner directly or indirectly resulting, in whole or in part, from or in connection with the performance of the work under this purchase order.

Seller shall defend, indemnify and hold harmless Buyer and each of its parents, affiliated and Subsidiary companies, and each of its officers, agents and employees (the "indemnified parties"), from and against any and all claims, losses, costs and expenses (including attorney's fees) of whatsoever kind or nature, whether arising before or after completion of the work hereunder, in any manner directly or indirectly resulting, in whole or in part, from or in connection with the performance of the work under this purchase order. Seller's aforesaid defense, indemnity and hold harmless obligations shall apply

even in the event of the fault or negligence, whether active or passive, of the indemnified parties to the fullest extent permitted by law, but in no event shall such obligations apply to liability caused by the willful misconduct or sole negligence of the indemnified parties.

Without limiting the foregoing, Seller's aforesaid defense, indemnity and hold harmless obligations shall include but not be limited to:

- (i) personal injury and death of persons, including employees of Seller, or Seller's suppliers, subcontractors or agents;
- (ii) damage to property;
- (iii) liability based on any transaction or agreement between Seller and any third party, including Seller's suppliers, subcontractors or agents; or
- (iv) liability based upon a violation of any law or regulation, including any fine or penalty assessed as a result thereof.

In any and all claims against the indemnified parties by any employee of Seller, its suppliers or subcontractors or anyone acting under its direction or control or on its behalf, the aforesaid defense, indemnity and hold harmless obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workmen's compensation acts, disability benefit acts or other employee benefit acts.

Seller hereby releases the indemnified parties from claims by Seller or Seller's suppliers, subcontractors or agents for damage to property of Seller or Seller's suppliers, subcontractors or agents, even if based upon the negligence of the indemnified parties.

Upon written request of any of the indemnified parties, Seller shall undertake defense of and otherwise be responsible for disposition of any action or proceeding brought against the indemnified parties based on a claim described in this article and pay all expenses in connection therewith including any final judgment or award rendered in such action or proceeding.

Seller shall, at its own cost and expense, pay all charges of attorneys, and all costs and expenses arising from or related to any of the aforesaid suits, actions or claims, or from any other claim for indemnity made by Buyer against Seller under this Order, including all charges of attorneys costs and expenses incurred by Buyer in connection with the enforcement of this clause against Seller in any suit, action or claim.

## **EXPORT CONTROL**

Seller shall notify Buyer in the event the products or information covered by this agreement are subject to export regulations of the U.S. Government, including the U.S. Department of State (International Traffic in Arms Regulations, 22 CFR 120 et seq.) and the U.S. Department of Commerce (U.S. Export Administration Regulations 15 CFR 730 et seq.) Seller shall comply with all laws related to exportation of the products or information to be delivered hereunder.

## **SOFTWARE LICENSE**

In the event that Seller provides any software or software documentation (collectively "Licensed Software") to Buyer under a Purchase Order and no separate software license agreement governing this sale has been signed between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:

- A. Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, transferable license to use the Licensed Software in connection with the items and/or services being provided pursuant to this Purchase Order.
- B. Buyer may make copies of Licensed Software so long as Buyer reproduces and includes all Seller proprietary and copyright notices, designations, and other legends in the same manner that Seller provides such notices, designations, and other legends, both in and on every copy of the Licensed Software.
- C. This software license is effective as of the date of first delivery hereunder and shall continue until terminated by Buyer for any reason whatsoever upon thirty (30) days prior written notice to Seller, provided Buyer ceases using and either returns or destroys the Licensed Software and all copies of the Licensed Software; or by Seller, if Buyer does not comply with any of the terms and conditions of this software license and Buyer fails to remedy such failure within thirty (30) days after having received notice from Seller of such failure.
- D. This license and sale are subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of the United States and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.

## **TAXES**

The prices set forth in or applicable to this Contract/Order are inclusive of all taxes or duties including but not limited to Federal, State, Municipal excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of goods or furnishing of services hereunder. There shall be no change in any term or condition of the Contract/Order on account of any change in taxes of any type applicable to any aspect of this Contract/Order.

## **SEVERABILITY**

If any provision of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

## **TITLE AND RISK OF LOSS**

Title and risk of loss to items shall be retained by Seller until the goods are physically delivered to the delivery point specified in the Purchase Order and in conforming condition and accepted by Buyer. In addition, Seller shall be responsible for any loss or damage attributable to the improper packing of the goods. Notwithstanding the foregoing, in the event of loss or damage to the goods within one year after arrival of the goods, Seller shall replace the goods at a price not more than 110% of the original Purchase Order price of the goods.

## SECURITY INTEREST AGREEMENT

If this Purchase Order provides for progress payments or advance payments to Seller:

- A. This Purchase Order shall comprise a Security Agreement between Seller (Debtor), whose chief place of business is as set forth in this Purchase Order, and Buyer (Secured Party). Accordingly, for value received hereunder, including any progress payments or advance payments now or hereafter made or in connection with this Purchase Order, Seller hereby grants to Buyer a security interest in the goods described in and to be supplied under this Purchase Order and in all raw materials, components and inventory identified thereto, whether now owned or held by Seller, or hereinafter acquired, and in products and proceeds thereof to secure Seller's full and complete performance under the terms and conditions of this Purchase Order.
- B. Seller further agrees to execute any other documents, including financing statements and separate security agreements evidencing such a grant of a security interest to Buyer, as Buyer may request from time to time for the purpose of establishing, perfecting or continuing such security interest in the collateral.
- C. Seller agrees that Seller will, and that Seller will permit Buyer's representatives to, appropriately mark or segregate the collateral so as to indicate Buyer's interest therein, or, at Buyer's option, to otherwise identify the goods or other collateral to this Purchase Order.
- D. Seller also warrants that Seller has not and that Seller will not sell, assign, or otherwise transfer or dispose of any of the collateral and that Seller has not and will not create, suffer or permit to attach or exist any lien or encumbrance thereon, except for the interest granted Buyer hereunder.

## SUSPENSION

Buyer may, at its sole option, by notice in writing to Seller, suspend at any time the performance of all or any portion of the services or production to be performed under this order. Upon receipt of a suspension notice from Buyer, Seller shall (i) unless specified otherwise in the suspension notice, immediately discontinue such services or production; (ii) place no further orders or subcontracts for material, services or facilities respecting such services or production other than to the extent specified in the suspension notice; (iii) promptly use its best efforts to obtain suspension upon terms satisfactory to Buyer of all orders, subcontracts and rental agreements to the extent they relate to performance of services or production suspended; and (iv) protect and maintain any property or materials related to such services or production. As full compensation for such suspension, the amount due Seller under this order shall be adjusted for the reasonable increase in costs to Seller, excluding profit, reasonably incurred without duplication of any item, of subsequently performing services or production, provided, however, that no adjustment shall be made by Buyer hereunder if (x) the services or production would have been interrupted or delayed for reasons independent of the suspension or such increased costs otherwise do not directly result from such suspension or (y) such adjustment is expressly prohibited or not required to be made under any other provision of this order. No claim for adjustment shall be made by Buyer unless submitted to Buyer in writing within twenty (20) days after the resumption of such services or production or the cancellation of the order hereunder, whichever first occurs.

## TERMINATION FOR DEFAULT

In addition to any rights or remedies Buyer may have in law, equity or hereunder, Buyer may terminate this order in whole or in part upon written notice to Seller in the event of Seller's (i) actual or anticipated breach of or default under any provision hereunder and failure to cure such breach or default within ten days of written notice from Buyer; (ii) failure to make progress in Buyer's reasonable discretion so as to impair Seller's performance hereunder; (iii) bankruptcy, reorganization, receivership, insolvency or making an assignment for the benefit of creditors; or (iv) other evidence of financial or organizational instability. Upon the effective date of termination specified in such written notice Seller shall (i) cease all work and place no further orders or subcontracts; (ii) terminate work orders and subcontracts; and (iii) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any such termination will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which may be set off against damages to Buyer. Upon such termination, Seller shall be liable to and will immediately reimburse Buyer for all costs of any nature in excess of the purchase price hereunder that may be incurred by Buyer to complete performance of the services or production contemplated hereby. At Buyer's option in the event of such termination, Seller shall transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited therefor.

## TERMINATION FOR CONVENIENCE

Buyer may terminate this order at any time upon written notice to Seller, whether or not Seller is in default of any of its obligations hereunder. Upon the effective date of termination specified in such written notice Seller shall (i) cease all work and place no further orders or subcontracts; (ii) terminate work orders and subcontracts; (iii) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest; and (iv) waive any claim for damages, including loss of anticipated profits, except for such recovery as is expressly provided by this provision. In the event of termination under this Article, Buyer shall have no further liability to Seller except that Seller shall be paid the agreed price for the goods or services delivered to and accepted by Buyer, plus actual costs incurred on any partly completed goods or services so terminated, which in any event shall not exceed the aggregate agreed price, less prior payments made. At Buyer's option in the event of such termination, Seller shall transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited therefor.

## DISPUTE RESOLUTION - FOREIGN

If any party to this contract is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration as in force at the commencement of the arbitration. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to this agreement may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the ICC in Accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators, one arbitrator to be named by Seller, one arbitrator to be named by Buyer, and the third arbitrator (who shall serve as the chairperson of the tribunal) to be appointed by the two party-appointed arbitrators. If the two party-appointed arbitrators fail to appoint a third within 15 days of the appointment of the second of the two party-appointed arbitrators, then either party may request that the chairperson be appointed by the ICC in accordance with its Rules of Arbitration. The place of arbitration shall be London, England. Any arbitral tribunal constituted pursuant to this agreement shall apply the law of England to all disputes. The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that this Agreement and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notwithstanding the foregoing, Curtiss-Wright may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

## **DISPUTE RESOLUTION - DOMESTIC**

If all parties to this contract are U.S.-entities, any controversy or claim arising out of or relating to this Agreement or its breach shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. In any arbitration hereunder, the parties may agree on the selection of a single arbitrator, but if they cannot so agree, each such party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder. The arbitrator(s) shall permit each of the parties to the Arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in the state in which Buyer's facility is located. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, Curtiss-Wright may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

## **APPLICABLE LAW**

This Agreement shall be interpreted in accordance with the laws of the State of New York, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

## **CONFIDENTIALITY**

Seller shall not, without the prior written consent of Buyer, make any release of information concerning this Order or any other information related to the Buyer (other than to Seller's employees and subcontractors that is required for the performance of their duties), including providing copies of this Order or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with a subpoena or other proper mandatory legal demand. Recognizing that any breach of this provision may result in damages that cannot be remedied through money damages, Seller agrees to the entry of injunctive or other equitable relief for any violation of this provision. Seller agrees not to assert any claim against Buyer with respect to any information that Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by this Order. The obligations of this paragraph shall survive termination or completion of this Order.

## **INVENTIONS AND OTHER PROPRIETARY RIGHTS**

Seller agrees that all designs, drawings, processes, compositions of material, specifications, software, mask works or other technical information made or furnished by Seller, its subcontractors, consultants, employees or agents in connection with the items or services covered by this Order, including all rights thereto (collectively "Furnished Designs"), shall be the sole and exclusive property of Buyer. Seller shall protect Furnished Designs against unauthorized disclosure to or use by any third party. With respect to all inventions and improvements in such Furnished Designs, Seller will promptly identify and disclose such inventions or improvements to Buyer and execute or obtain the execution of any papers as may be necessary to perfect ownership of the inventions or improvements to Buyer or as may be necessary in the obtaining, maintenance, or enforcement by Buyer of any patent, trademark, copyright, trade secret, know how, mask work right or other proprietary right pertaining (collectively "Proprietary Rights") to the inventions or improvements. Seller shall and shall cause and obligate its subcontractors, consultants, employees and agents to (i) cooperate with Buyer in obtaining such Proprietary Rights to the inventions or improvements and (ii) execute such documents and do all other things reasonably necessary to obtain such Proprietary Rights to the inventions or improvements. Information prepared by Seller specifically in connection with performance of this Order, including original works of authorship created by Seller, is considered "works made for hire" under U.S. Copyright Law. Buyer shall be deemed the author of such works. If any such work is determined by a court of competent jurisdiction not to be a work made for hire, this agreement shall operate as an irrevocable assignment by the author of such work to Buyer, of the copyright in the work, including all right, title and interest throughout the world. Seller represents that (i) to its knowledge, the items and services delivered under this Order are not infringed, covered, and/or protected by any United States or foreign patent owned by a third party and (ii) that Seller has not been notified by a third party that the items and services delivered under this Order are infringed, covered, and/or protected by any United States or foreign patent. The obligations of this paragraph shall survive termination or completion of this Order.

## **COMPLIANCE WITH LAWS**

1. Seller in the performance of this Order shall comply with all federal, state and local laws, rules and regulations applicable to or incorporated by reference in this Order, including but not limited to, all applicable environmental protection laws, rules and regulations, the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) and the Occupational Safety & Health Act of 1970, as amended ("OSHA"), the International Traffic in Arms Regulations as amended, and all rules and regulations thereunder. Each invoice submitted against this Order shall constitute a representation and warranty by Seller that the goods, supply and/or services were delivered in compliance with all such legal requirements, and if Buyer is subjected to any liability as the result of Seller's or its Subcontractors' failure to comply with the requirements of this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

2. Seller agrees to furnish information, within seven (7) days of Buyer's request, regarding payment, offer, or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. 130) with respect to any sale by the Buyer for which a license or approval is required from the Office of Defense Trade Controls, Department of State or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).

## **SETOFF**

Buyer may set off from any amounts due hereunder any amount due from Seller to Buyer, whether or not such amount is incurred in connection with or arises under this order.