



DOC#AFC/TPC001A  
(1/07)

**AeroFab/Tube Processing General Terms and Conditions of Purchase**

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**1. ACCEPTANCE OF TERMS**

Supplier (or Seller to whom the Order is addressed) agrees to be bound by and to comply with all terms set forth in the purchase order, to which these terms are attached and are expressly incorporated by reference (collectively, the "Order"), including amendments, supplements, specifications and other documents referred to in this Order. Acknowledgement of this Order, including without limitation, by beginning performance of the work called for by this Order, shall be deemed an acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction. Verbal start works are to be validated by a written purchase order only. This Order does not constitute an acceptance by Buyer of any offer to sell any quotation or any proposal. Reference in this Order to any such offer to sell quotation or proposal shall in no way constitute a modification of any of the terms in this Order. These general conditions, including Buyer Quality Requirements and the terms and special conditions appearing on the Order are the only express conditions, against which Buyer procures goods ("Goods") or services ("Services") specified on the Order.

**ANY ATTEMPTED ACKNOWLEDGEMENT OF THIS ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER IS NOT BINDING UNLESS SPECIALLY ACCEPTED IN WRITING.**

**2. PRICES AND PAYMENTS**

- (a) All prices on the Order are fixed and shall not be subject to change. Supplier's price includes all sovereign, state and local sales, use, excise, value added, privilege, payroll, occupational and any other taxes, fees, or duties applicable to the Goods or Work. Supplier shall ensure that if any value-added or similar tax is applicable, that it is invoiced in accordance with the applicable rules so as to allow the Buyer to reclaim that value-added or similar tax from the appropriate government authority.
- (b) Unless otherwise stated on the face of this Order, payment terms are net due 90 days from the Payment Start Date. The Payment Start Date is the later of the required date identified on the Order, the received date of the goods in the Buyer's receiving system or the date of receipt of valid invoice by Supplier provided that the Supplier has provided Goods or Work in accordance with Order Conditions.
- (c) Buyer may deduct the amount of any bona-fide contra accounts or other claims, which Buyer may have against Supplier from any payments due to the Supplier under any contract.
- (d) Buyer reserves the right to exercise the Cost Recovery process and debit payment to Supplier any production line downtime, overtime or extra expenses incurred in association with supplier quality, delivery or production issues.
- (e) To ensure prompt and timely payment, Seller's invoice shall in all cases bear packing slips which match the accompanying Order and shall include the Order due date and quantity. Buyer shall be entitled to reject Supplier's invoice if it fails to include the Buyer Order number or is otherwise inaccurate, and any resulting delay in payment shall be Supplier's responsibility.
- (f) Supplier warrants that it is authorized to receive payment in the currency stated in this Order. No extra charges of any kind will be allowed unless specifically agreed in writing by Buyer. Buyer shall be entitled at any time to set-off any and all amounts owing from the Supplier to Buyer, or a Buyer parent, affiliate or subsidiary, on this or any other Order. Supplier warrants the pricing for any Goods or Services shall not exceed the pricing for the same or, comparable goods or services offered by Supplier to third parties.

**3. SHIPPING INSTRUCTIONS**

- (a) Supplier shall be responsible for ensuring the proper packaging of materials hereunder. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless specified in this Order.
- (b) Supplier shall at all times comply with Buyer's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or air-bill, as appropriate. Supplier shall submit all required shipping papers to Buyer prior to final payment. For material purchased F.O.B. origin, the Supplier shall not insure and not declare a value except when transportation rates are based on "released value," in which instance the Supplier shall annotate on the bill of lading the lowest released value provided in applicable tariffs.
- (c) Order number (s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, airbills and invoices.
- (d) Prior to shipment, Supplier shall provide notice in writing of any and all constraints relevant to the Order such as short shipments, potential quality issues, over shipments, capacity issues, etc, to Buyer's Materials Management Representative. Buyer reserves the right to assess and apply a service-processing fee (as part of our Cost Recovery Process) of *not less than* five hundred and fifty dollars (\$550) for non-compliance.
- (e) Early shipments are not acceptable unless the Supplier has notified the Buyer's Materials Management Representative five business days in advance of a shipment or the Buyer has requested early shipment, in writing, a minimum of five business days before the product is required as stated on the purchase order.

**4. DELIVERY, NOTICE OF DELAY AND PASSING OF TITLE**

- (a) Time is of the essence on this Order. Failure to deliver or any delay in accordance with the delivery schedule under this Order shall be considered a material breach of this Order. Buyer may assess such amounts as may be set on the face of this Order as liquidated damages for the agreed delay period. The parties agree that such amounts, if assessed, are an exclusive remedy for the agreed delay period, are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the Order was issued, and are to be assessed as liquidated damages and not as a penalty. In the absence of agreed liquidated damages, Buyer shall be entitled to recover damages. No acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer shall be entitled to recover damages incurred as a result of Supplier's failure to perform. Supplier shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule. Shipments of late deliveries shall be expedited using premium freight as applicable at the Supplier's expense.
- (b) Supplier must provide written notification/records of any inspection/test results for inaccessible characteristics that cannot be inspected upon receipt at Tube Processing Corporation (or any Division thereof).
- (c) Supplier shall notify Buyer in writing immediately of any actual, anticipated or potential delay to the performance of this Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.
- (d) Buyer reserves the right to refuse or return at Supplier's risk and expense shipments made in excess of Buyer's Orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (e) Tube Processing Corporation (or any Div., thereof) and its customers, retain the right of access to the Supplier's premises, including manufacturing and distribution facilities, at all reasonable times to review Goods and to monitor the progress of Services. This includes the right to audit pertinent records extends to Suppliers subcontractors.
- (f) The Supplier will provide information, as requested and in a timely manner, relating to the progress in accomplishing the Order. All production, delivery or quality issues which alter Buyer's workflow will require a detailed recovery plan submitted in writing to the Buyer's Materials Management Representative on the same day Buyer is notified of issue (s).
- (g) Upon delivery, Buyer may reject Goods and/or Services if non-conformant in whole or in part with any Order Condition. The Supplier will rectify any defects at the Supplier's expense. The Supplier will carry out such rectification at Buyer's premises if Buyer so requires. Buyer reserves the right to assess cost recovery incurred of not less than five hundred and fifty dollars (\$550) to remedy defects at Buyer or Supplier's site.

**5. BUYER'S PROPERTY**

- (a) All tangible and intangible property, including, but not limited to, information or data of any description, tools, jigs, dies, fixtures, materials, drawings, computer software, intellectual material, or equipment furnished to the Supplier by the Buyer or specially paid for by the Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the property of the Buyer.
- (b) All such items shall be used only in the performance of work under this Purchase Order unless Buyer consents otherwise in writing. Items shall be plainly marked or otherwise adequately identified by Supplier as Buyer's property and shall be safely stored separate and apart from Supplier's property. Supplier shall not use, disclose or reproduce it for any other purpose. Such property, when in Supplier's custody or control, shall be kept insured by the Supplier at the Supplier's expense in an amount equal to the replacement cost payable to the Buyer.
- (c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.
- (d) Buyer's property shall be subject to return upon Buyer's written request and in which event Supplier shall prepare such property for shipment and deliver to Buyer in the same condition as originally received by Supplier, reasonable wear and tear expected, all at Supplier's expense. Material supplied free of charge by Buyer must be returned to Buyer as unused material, conforming parts, non-conforming parts submitted for consideration, scrap through material faults, scrap due to machining or manipulation, or as work in progress following termination under Clause 10. The Supplier will, if so directed by the Buyer, make available to the Buyer disposable or machined material scrap. Supplier will be responsible to pay the full cost of replacing any material including but not limited to, any scrap material not supported by documentation and any scrap due to faulty processes.
- (e) This Clause 5 does not apply to information that is in or comes into public domain other than through a breach of this clause. This Clause 5 will survive termination of the Order.

**6. PROPRIETARY RIGHTS LIABILITY**

(a) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below, or (ii) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software, and the like.

(b) Unless otherwise expressly agreed in writing to the contrary and subject to Section 9 (d) below, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing goods and services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.

(c) Unless otherwise expressly agreed in writing to the contrary and subject to Section 9 (d) below, any invention or intellectual property first made or derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in writing to the contrary and subject to Section 9 (d) below, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for hire."

(d) Applicable Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 9 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject, inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between parties.

**7. DRAWINGS**

Any review or approval of drawings by Buyer will be for the Supplier's convenience and will not relieve Supplier of the responsibility to meet all requirements in this order. If Supplier or its licensees require manufacturing data and drawings relevant to the Order, the Supplier will provide them.

**8. CHANGES**

Buyer may, at his discretion, make changes within the general scope of this Order in any one or more of the following:

- (a) Drawings, designs or specifications where the goods to be furnished are to be specifically manufactured for Buyer.
- (b) Method of shipment or packing.
- (c) Place and time of delivery.
- (d) Amount of Buyer's furnished property.
- (e) Quality
- (f) Quantity
- (g) Scope or schedule of goods and/or services.

If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any Supplier claim for adjustment under this clause will be deemed waived unless asserted within thirty (30) days from Supplier's receipt of change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change. Any change to this Order shall be made by a signed amendment.

**9. REJECTION**

Supplier is required to notify Buyer of any deviation to this Order in advance and retains the right of final approval of any product or process covered under this purchase order. Failure to meet requirements will result in a formal rejection notice that will be followed by notification to the supplier and return of material accompanied by a debit against this order and any corresponding invoices. Changes in process or product will not be made without prior approval of Buyer's Purchasing or Quality Representative. If any element of performance pursuant to this Order is found at any time prior to the expiration of warranty to be defective or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, whether such defect or non-conformity relates to scope provided by the Supplier or a direct or indirect sub-tier supplier to the Supplier, Buyer, in addition to other rights, remedies and choices may have by contract or by law, and in addition to seeking recovery of any and all damages and costs emanating therefrom, as its option and sole discretion, may at the Supplier's expense:

- (a) Rescind this Order without liability.
- (b) Reject and return such goods or services.
- (c) Take action to cure all defects and/or bring the Goods into conformity with all requirements, allocating all costs, expenses (including material, labor and handling costs; and any required re-performance of value added machining or other service), and other reasonable charges for Supplier's account.
- (d) As part of our Cost Recovery Process, withhold total or partial payment, charge a recovery fee of not less than five-hundred and fifty dollars (\$550) and a processing fee of not less than five-hundred and fifty dollars (\$550) and/or
- (e) Require Supplier to immediately re-perform any defective portion of the services performed and/or require Supplier to immediately replace non-conforming goods with goods that conform to this Order

and will submit a corrective action response to Buyer's Quality Assurance Department. All actions in this paragraph 8 part (e) are subject to the same recovery fees as listed in part (d) of this paragraph 8 and include the costs to ship parts to the supplier. Shipping costs to ship parts to Buyer after performing rework or replacement is the sole responsibility of the Supplier.

For any repairs or replacements, Supplier shall perform any tests requested by Buyer to verify conformance to this Order. Cost for tests shall be born by the Supplier.

**10. SUSPENSION**

Buyer may at his discretion, by notice to Supplier suspend performance of the work for such time, as it deems appropriate. Upon receiving notice of suspension Supplier shall promptly suspend work to the extent specified properly caring for and protecting all work in progress and materials, supplies, and equipment Supplier has on hand for performance. Upon Buyer's request, Supplier shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and service for the work, and shall take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. All claims for increase or decrease in the cost of, or the time required for the performance of any work caused by suspension shall be pursued pursuant to, and consistent with, Section 7 "Changes" clause.

**11. TERMINATION**

**11.1** *Termination for Convenience.*

- (a) Buyer may, by notice in writing, terminate this Order for convenience and without cause, in whole or in part, at any time and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the Order. Buyer will be subject to pay restocking or other fees under any circumstances.
- (b) Upon termination (other than due to Seller's insolvency or default including failure to comply with this order), Buyer and Seller shall negotiate reasonable termination costs consistent with costs allowable under Section 8. Seller shall identify terminations costs within thirty (30) days of Buyer's termination notice to Seller, unless the parties have agreed to termination a schedule in writing.
- (c) Seller's obligations shall survive such termination, including but not limited to obligations under the warranty, proprietary rights, infringement and indemnity against claims provisions of the Order.

**11.2** *Termination for Default.*

- (a) Buyer may, by written notice, terminate this Order in whole or in any part at any time for breach of any one or more of its terms, for failure to make progress so as to endanger performance of this Order, or failure to provide adequate assurance of future performance. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the order.
- (b) In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity.
- (c) Seller's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement and indemnity against claims provisions of this Order, shall survive such termination.

Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default. Upon termination, Buyer may procure at Seller's expense and upon terms it deems appropriate, Goods or Services similar to those so terminated and shall be liable to Buyer for any excess costs for such similar Goods or Services. As an alternate remedy in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any delivery schedule, Buyer may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by the Seller. Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this order.

**11.3** *Termination for Insolvency/Prolonged Delay.* If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought against Seller, a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made or an excused delay (or the aggregate time of multiple excused days) lasts more than sixty (60) days, Buyer may immediately terminate this Order without liability, except for Goods and Services completed, delivered and accepted within a reasonable period after termination (which shall be paid for at the Order price).

**11.4** *Obligations on Termination.* Upon expiration or after receipt of a notice of termination for any reason, Seller shall immediately:

- (1) Stop work as directed in the notice.
- (2) Place no further subcontracts or purchase orders for materials, services or facilities hereunder, except as necessary to complete the continued portion of this Order: and
- (3) Terminate all subcontracts to the extent they relate to work terminate.

After termination, Seller shall deliver to Buyer all completed work and work in progress including all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all of Buyer's Confidential Information as set forth in Section 15.

**12. FORCE MAJEURE**

Except for defaults of Seller's subcontractors at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that the performance of this Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the party whose performance is so affected shall so notify the other party's authorized representative in writing and, at Buyer's option, this Purchase Order shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or this Purchase Order may be terminated for convenience.

**13. INDEMNITY AGAINST CLAIMS AND INSURANCE**

**13.1 Indemnity.**

(a) Seller shall keep its work and all items supplied hereunder and Buyers premises free and clear of all liens, demands, losses, judgments, fines, penalties, damages, cost, expenses or liabilities (including without limitation claims for personal injury or property or environmental damages or damages payable to customers of Buyer and breaches Section 13 and/or 15 below) arising from performance of this Purchase Order or by any of its vendors or subcontractors. Seller further agrees to indemnify Buyer for any attorney's fees or other costs that Company incurs in the event that Company has to file a lawsuit to enforce any indemnity or additional provisions of this order.

(b) Seller shall, without limitation, indemnify and save Buyer and its customer (s) and their respective officers, Directors, employees and agents harmless from and against (i) all claims (including claims under Worker's Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the goods or services or other items supplied by Seller pursuant to this Purchase Order except to the extent that such injury, death, or loss or damage is caused solely and directly by the negligence of Buyer, and (ii) all claims (including resulting costs, expenses and liability) by employees of Seller or any of its subcontractors

**13.2 Insurance.** Seller shall be responsible for the actions and failure to act of all parties retained by, through or under Seller in connection with the performance of this Order. Seller shall also maintain and cause its subcontractors to maintain such General Liability, Property, Damage, Employer's Liability, and Workers' Compensation Insurance, Professional Errors and Omissions Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this order or, if none are specified, such amount as will protect Seller (and its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes. Seller shall provide Buyer with certificates evidencing required insurance upon Buyer's request. Compensation and Employers' Liability shall be obtained for each local employee outside the United States where work in connection with this Order is performed. Seller hereby waives subrogation. All insurance specified in this section shall contain a waiver of subrogation in favor of Buyer, its Affiliates and their respective employees for all losses and damages covered by the insurance required in this section, including coverage for damages to Buyer's property in Seller's care, custody or control.

**14. ASSIGNMENT AND SUBCONTRACTING**

(a) Seller may not assign any rights or delegate any of its obligations due or to become due under this Purchase Order without prior written consent of Buyer. Any purported assignment or delegation by Seller without such consent will be void. Buyer may assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Buyer's customer. Buyer shall have the right at any time to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries and/or affiliates pursuant to this Purchase Order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates.

(b) Seller shall promptly notify the Buyer in writing in advance of any organizational changes planned by Seller, including name or ownership changes, mergers or acquisitions.

**15. SUPPLY OF PERSONNEL**

Any personnel from whom the Supplier provides Goods or Services, are at all times deemed employed by the Supplier.

**16. INTELLECTUAL PROPERTY INDEMNIFICATION**

Supplier shall indemnify, defend and hold Buyer harmless from all cost and expenses related to any suit, claim or proceeding brought against Buyer or its customers based on a claim that any article or apparatus, or any part thereof, constituting Goods or Services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party. Buyer shall notify Supplier promptly and give authority, information, and assistance (at Supplier's expense) for the defense of it, and Supplier shall pay all damages and costs awarded therein. If use of said article, apparatus, part, device or process is enjoined, Supplier shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace same with a non infringing equivalent.

**17. COMPLIANCE WITH LAWS-GENERAL**

- (a) Supplier warrants that the materials to be furnished and the services to be rendered under this Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of articles and/or the performance of the services covered by this Order, it has fully complied with Section 7, 11, 17.3, and of the Fair Labor Standards Act of 1938, as amended, and of regulations and order of the United States Department of Labor under Section 14 thereof, if applicable.
- (b) Supplier shall also comply with good industry practices, including the exercise of that degree of skill, diligence, prudence and foresight which can reasonably be expected from a competent Supplier who is engaged in the same type of service or manufacture under similar circumstances in a manner consistent with all applicable requirements and with all applicable generally recognized international standards. No forced or prison labor, or labor in violation of minimum working age law in the country of manufacture may be used in connection with this Order. If forced or prison labor, or labor below applicable minimum working age, is determined to have been used in connection with this Order, Buyer shall have the right to immediately terminate the Order without further compensation.
- (c) Seller warrants that all equipment and materials delivered under this Order are in conformance with the latest OSHA requirements.
- (d) The Seller warrants that in the performance of this Order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this warranty. The foregoing is in addition to and not in mitigation of any other requirements of this Order.
- (e) Seller warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- (f) For Orders placed in support of and charged to a U.S. Government Prime Contract or subcontract thereunder procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said prime contract are incorporated herein by reference. All clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this Order. The Seller shall include the terms of this Article, including this Section 17 (f) in all purchase orders or subcontracts awarded under this Order.

1. Utilization of Small Business Concerns	52.219-8
2. Equal Opportunity	52.222-26
3. Equal Opportunity for Special Disabilities Veterans, Veterans of the Vietnam Era and Other Eligible Veterans	52.222.35
4. Affirmative Action for Workers with Disabilities	52.222.36
5. Subcontracts for Commercial Items	52.244-6
6. Preference for Privately Owned U.S. Flag Commercial Vessels	52.247-64
7. Preference for Domestic Specialty Metals (DoD Contracts)	252.225-7014

As prescribed in 225.7002-3 (b) (1) use the following clause:

- (a) *Definitions.* As used in this clause-
  - (1) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.
  - (2) "Specialty metals" means-
    - (i) Steel-
      - (A) With a maximum ally content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
      - (B) Containing more than 0.25 percent of any of the following elements: Aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;
    - (ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;
    - (iii) Titanium and titanium alloys; or
    - (iv) Zirconium and zirconium base alloys.
- (b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or in outlying areas
- (c) This clause does not apply to specialty metals-
  - (1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying Country; or
  - (2) Purchased by a subcontractor at any tier.

8. Preference for Domestic Specialty Metals-Alternate 1 (DoD Contracts)	252.225.7014
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As prescribed in 225.7002-3 (b) (2), substitutes the following paragraph (c) for paragraph (c) of the basic clause, and adds the following paragraph (d) to the basic clause

country or  
 paragraph (d),  
 (c) This clause does not apply to specialty metals melted in a qualifying  
 Incorporated in an article manufactured in a qualifying country.  
 (d) The Contractor shall insert the substance of this clause, including  
 In all subcontracts for items containing specialty metals

- 9. Subcontracts for Commercial Items and Commercial Components (DoD) 252.244-7000
- 10. Transportation of Supplies by Sea (DoD Contracts) 252.247-7023
- 11. Notification of Transportation of Supplies by Sea (DoD Contracts) 252.247-7024
- 12. Restriction on Acquisition of Hand or Measuring Tools 252.225.7015

As prescribed in 225.7002-3 (c), use the following clause:

**RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS**

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

- 13. Restriction on Acquisition of Ball and Roller Bearings. 252.225-7016

As prescribed in 225.7009-5, use the following clause:

- (a) Definitions. As used in this clause.
  - (1) "Bearing components," means the bearing element, retainer, inner race or outer race.
  - (2) "Component", other than bearing components, means any item supplied to the Government as part of an end product or of another component.
  - (3) "End product" means supplies delivered under a line item of this contract.
- (b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified in this contract, raw materials, such as preformed bar, tube or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas or Canada.
- (c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as-
  - (1) Commercial components of a noncommercial end product; or
  - (2) Commercial or noncommercial components of a commercial component of a noncommercial end product.
- (d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts, except those for-

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

**ALTERNATE I**

As prescribed in 225.7009-4 (b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause: (c)(1)(ii) the ball or roller bearings are commercial components.

**17.1 GOVERNING LAW**

The interpretation, application and enforcement of this Order shall be governed in accordance with the laws of the State of Indiana without reference to choice of law principles. Any claim, suit or cause of action involving the interpretation, application or enforcement of this Order shall be commenced in the Marion County Circuit Court in Indianapolis, Indiana.

**17.2 LAW**

Orders will be subject to and interpreted in accordance with the laws of Indiana and the United States. Clause headings will not form part of or affect the interpretation of Orders. The Equal Opportunity clause set forth in 41 CFR & 60-1.4, the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause set forth in 41 CFR & 60-250.4 and the Affirmative Action for Handicapped Workers clause set forth in 41 CFR & 60-741.4 are hereby incorporated by reference as though fully set forth herein. This requirement flows down to any and all subcontractors.

**17.3 DISPUTES**

- (a) Any controversy or claim that may arise out of or in connection with this Order that after good faith negotiations cannot be resolved to both Parties mutual satisfaction, may be resolved by submitting the claim to a court of competent jurisdiction.
- (b) Pending resolution or settlement of any dispute arising out of this Order, Seller will proceed diligently as directed by Buyer with the performance of this Order. Irrespective of the place of performance, this Order will be construed and interpreted according to the laws of Indiana from which this Order is issued, without resort to said State's Conflicts of Law Rules.

**18. PROPER BUSINESS PRACTICES**

Supplier shall act in a manner consistent with Buyer's integrity policies, a copy of which have been provided to the Supplier, all laws concerning improper or illegal payments and gifts or gratuities, and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order. Further, in the execution of its obligations under this Order, Supplier shall take the necessary precautions to prevent injury to persons or to property.

**19. WAIVER**

No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Failure at any time to enforce any provisions hereof shall be construed as waiver of a party's rights thereafter to enforce each and every such provision.

**20. QUALITY CONTROL REQUIREMENTS**

- (a) Goods and Services will be inspected and released by the Supplier and is expected to fulfill all requirements as directed on the Order. Buyer's Quality and Engineering departments will determine final acceptance of the product.
- (b) In the event Supplier performance results in production, delivery or quality issues, corrective action will be required. A short-term corrective action is due immediately when Supplier discloses issue in writing. Buyer's "Supplier Corrective Action Plan" form shall be completed and returned to Buyer within five business days of being issued.
- (c) In the event Goods or Services do not conform with any Order Terms, that is are not free from defects, (hereafter called Non-conforming Item) or causes delays to Buyer's customer as a result of this Non-conforming Item, or causes Buyer penalties, Buyer reserves the right to rectify or arrange to have rectified such item and Supplier shall reimburse Buyer for all costs relating to such rectification and for all damages sustained due to the Non-Conforming Item.
- (d) Buyer reserves the right to charge back to the Supplier for Non-conforming items actual costs incurred directly or indirectly to perform internal administration efforts such as; quality inspections, complete paperwork, and investigate and prepare corrective action reports. Without prejudice to other terms set forth, a non-negotiable Change Order will be issued to the Supplier with a fair rate of assessment of efforts only associated with such incidences. Supplier will comply with the non-negotiable Change Order within thirty (30) days of receipt of such Change Order.
- (e) Supplier agrees to cooperate fully with audit or inspection efforts of Buyer intended to verify compliance by Supplier with Sections 17 or 20 of this Order. Supplier further agrees to provide at Buyer's request certificates relating to any applicable legal requirements or to update any and all of the certifications, representations and warranties under this Order, in form and substance satisfactory to Buyer.
- (f) Supplier packing slip must reference the purchase order number, part number as stated on the Order and Heat number (when applicable). All documents should be traceable to each other (Inspection Method sheets, Certificates of Conformance, Material Certifications, etc).

**21. CONFORMANCE AND QUALITY ASSURANCE**

Supplier must have in force and maintain throughout its performance of the Order an accredited Quality Assurance system and will allow Buyer, or any representative of Buyer to inspect Suppliers Quality Assurance documents and procedures, at any of Suppliers premises, upon reasonable notice.

**22. RECORD RETENTION**

Quality record retention is required as stated in the attached latest revision of Buyer's procedure TPOP 5-21.

**23. WARRANTY**

- (a) Supplier warrants that all Goods or Services provided pursuant to this Order, whether provided by Supplier or a direct or indirect supplier for the Supplier, will be free from defects in workmanship, materials, and design and to be in accordance with all of the requirements of this Order. Supplier further warrants that the performance of work and services pursuant to the requirements of this Order shall conform to high professional standards. These warranties shall survive final acceptance and payment.
- (b) Supplier warrants and represents that all Goods and Work will be provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements approved or adopted by Buyer. Any attempt by Supplier to limit, disclaim, or restrict any such warranties or remedies by acknowledgement or otherwise shall be null, void and ineffective.
- (c) The foregoing warranties shall apply for a period of twenty-four (24) months, or such longer period of time as customarily provided by the Supplier, plus delays such as those due to non conformance, from the date of delivery of all Goods and Work from Supplier to destination. If any Goods or Work are found to be defective during the warranty period then, in addition to other rights, remedies and choices as it may have by law, contract or at equity, Buyer at its option and sole discretion and at Supplier's expense may: (a) reject and return such Goods and Work; (b) require Supplier to remove, ship and reinstall/re-perform nonconforming goods and/or Work with Goods and Work that conform to all the requirements of this Order; and/or (c) take such actions as may be required to cure all defects and/or bring the Goods and Work into conformity with all requirements or this Order, in which event all costs and expenses including material, labor and handling costs and charges (inclusive of any required re-performance of value added machining or other service), incurred by Buyer shall be for Supplier's account. Any repaired

or replaced part, or re-performed Work shall carry warranties on the same terms as set forth above, with the warranty period being later than the original un-expired warranty or twenty-four (24) months after repair or replacement.

- (d) This warranty entitlement shall inure to the benefit of both Buyer and Buyer's customers. As used in this Order, Buyer's customer (s) shall include its direct and indirect customers such as direct sale end-users, higher tier subcontractors, prime contractors and the ultimate user under relevant contract (s).

**24. PACKING, PRESERVATION AND MARKING**

Packing, preservation and marking will be in accordance with the specification drawing or as specified on the Order, if not specified, best commercially accepted practice will be used and be consistent with applicable law. The Country of Origin for all goods shipped across international borders shall be marked in a conspicuous location as legibly, indelibly and permanently as the nature of the article or container will permit, so as to clearly indicate to Buyer and Customs the origin of goods. The gross and net weight, shipping address, mode of packing and in case of over-dimensional shipment the hook-points, and stacking ability shall be marked on the packing.

**25. INSPECTION**

- (a) All material and workmanship shall be subject to inspection and test at all reasonable times and places by Buyer and Buyer's customer before, during and after performance and delivery. The Buyer may require Supplier to repair, replace, or reimburse the purchase price of rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging and/or re-inspection by Buyer shall be at Seller's expense.
- (b) If inspection and test are made on the premises of Supplier or Supplier's lower tier subcontractors, Supplier shall furnish without additional charge all reasonable facilities. Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Order.

**26. INTERNATIONAL TRANSACTIONS**

- (a) Payment will be in United States dollars unless otherwise agreed to by specific reference in the Purchase Order.
- (b) Seller agrees that the Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of the Purchase Order to satisfy any international offset obligations with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

**27. EXPORT/IMPORT CONTROLS**

- (a) If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms regulations ("ITAR") and its Export Administration Regulations ("EAR").
- (b) Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with this Purchase Order shall be provided to any foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export license, technical assistance or other requisite documentation for ITAR controlled technical data or items. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.
- (c) Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended, or revoked.

**28. SEVERABILITY**

If any provision of this Purchase Order or application thereof is found invalid, illegal or enforceable by law the remainder of this Purchase Order will remain valid, enforceable and in full force and effect.

**29. PERSONAL DATA PROTECTION**

"Personal Data" includes any information relating to an identified or identifiable natural person; "Buyer Personal Data" includes any Personal Data obtained by Seller from Buyer. The Supplier undertakes that, in relation to this Order or any Contract, it shall, in respect of all personal data provided by Buyer, comply strictly with all requirements of the Data Protection Act 1998 as if it were the Data Controller of such personal data. The phrases "Personal Data" and "Data Controller" shall bear the meanings attributed to them in the Data Protection Act 1998. The Supplier shall indemnify Buyer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which Buyer may incur arising out of any breach of this Clause 30.

**30. HAZARDOUS MATERIALS REGULATIONS**

All shipments of hazardous materials must comply with IATA and regulations in CFR 49 as applicable, covering description, proper shipping, name, class label, packaging, and other requirements.

**31. REMEDIES**

The rights and remedies reserved to Buyer in this Order shall be cumulative and additional to all other or further remedies.

**32. ENTIRE AGREEMENT**

This Order, with documents as are expressly incorporated by reference, contains the entire agreement of the parties. It may not be modified or terminated orally and no claimed modification, termination or waiver shall be binding unless in writing signed by an authorized representative of Aerofab, Corp. No modification or waiver shall be deemed effected by Seller's acknowledgement or confirmation containing other or different terms. Facsimile signatures on such counterparts are deemed originals. No course of prior dealing and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. All titles to clauses contained in this order are for identification only and shall not be construed as being a substantive part of the agreement.