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## **Derco Aerospace, Inc. / Derco Repair Services, Inc.**

### Standard Terms and Conditions of Purchase

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#### **I. ORDER ACCEPTANCE**

- A. The issuance by Derco Aerospace, Inc. / Derco Repair Services, Inc. (“Buyer”) of any order (“Order”) for parts, including but not limited to spare parts, materials, supplies, and ground support equipment (“Parts”) and services, including, but not limited to repair and overhaul services, design, engineering, maintenance, technical, construction, consulting, professional, or other services (“Services”, and collectively with Parts, “Goods“), is expressly made conditional upon Seller’s agreement to and acceptance of the terms and conditions contained herein. Seller’s acceptance of such shall be implied by (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order without exception within three (3) days of receipt. Any terms and conditions proposed in Seller’s acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms and conditions herein are hereby rejected unless otherwise mutually agreed upon in writing.

#### **II. QUALITY ASSURANCE; INSPECTION, ACCEPTANCE AND REJECTION**

- A. Seller will maintain a quality management system which is acceptable to Buyer and appropriate for the Goods supplied hereunder, and shall comply with general industry standards, unless otherwise previously approved by the buyer’s quality representative.
- B. Goods shall comply with Original Equipment Manufacturer’s specifications and tests, as well as all applicable specifications and standards provided by Buyer and/or required by law or regulation, wherever and however incorporated, including by reference or otherwise. Where applicable, Buyer shall provide Seller with additional, Order-specific quality assurance requirements, which shall be appended to the Order or incorporated therein by reference.
- C. Certification of Conformance of all Parts must accompany the Parts from Seller’s facility, including a statement of the condition of the Parts, back-up data on file for inspection, and signed by an authorized representative of Seller. Should such certification not accompany the shipment, Parts will be held in quarantine and no payment will be processed until the proper certification is received. Buyer reserves the right to be supplied with and/or audit such certification on all new items purchased. This may require traceability and full source documentation. All raw material, machining, and processing certifications shall be supplied at no cost if requested. All Certifications and related documentation must be retained on file by Seller for a period of at least ten (10) years after completion of this Order.
- D. Buyer reserves the right to inspect Goods prior to acceptance and payment, in accordance with the quality requirements set forth herein. If this Order is identified as being in support of a United States Government (“USG”) contract, then the USG shall also have the right to inspect Goods prior to acceptance and payment, in accordance with the quality requirements set forth herein. If any Goods are defective and/or otherwise not in conformity with the requirements of the Order, Buyer or the USG may (i) accept conforming Goods and rescind any portion of the Order for any non-conforming Goods; (ii) accept non-conforming Goods at an equitable reduction in price; or (iii) reject non-conforming Goods and require the delivery of replacement

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Goods. Non-conforming Goods, if rejected by Buyer or the USG, shall be returned to Seller at Seller's expense and risk of loss.

### III. DELIVERY AND PAYMENT

- A. Time is of the essence in Seller's performance of an Order, and Seller shall deliver Goods by the delivery date.
- B. Shipment shall be to the location directed by Buyer. Invoicing, delivery terms, shipping, packing and waste reduction instructions shall be provided to Seller through an attachment to, or printing on the face of, the Order or incorporated into the Order by reference to a web site. In the absence of such instructions, the delivery terms for Goods shall be FCA Seller's facility (Incoterms 2010). Title and risk of loss shall pass to Buyer upon receipt of Parts at Buyer's facility or third party drop shipment point, as applicable. Buyer will insure the Parts for transport from Seller to Buyer, or other destination as may be directed by Buyer. Any transport insurance taken out by Seller will be deducted from Seller's invoice by Buyer.
- C. Payment terms shall be net sixty (60) calendar days after Buyer's verification of conforming Goods delivered to Buyer or Buyer's designated delivery destination. All prices set forth in the Order shall be firm fixed in U.S. dollars, and inclusive of all federal, state, and local taxes, levies, tariffs, and duties, the payment of which shall remain Seller's obligation.

### IV. WARRANTY

- A. Seller warrants to Buyer and Buyer's successors, assigns, customers, and users of Parts sold by Buyer that all Parts provided hereunder: (i) shall be merchantable and fit for the purpose intended; (ii) shall be free from defects in material and workmanship; (iii) shall be free from defects in design; (iv) shall be in compliance with all applicable specifications, drawings, and performance requirements; and (v) shall be free from liens or encumbrances on title. Such warranty shall be valid for a period of thirty-six (36) months after delivery to Buyer or twenty-four (24) months after delivery to Buyer's customer, whichever is earlier, for Factory New Parts; for six (6) months after delivery to Buyer for New Surplus and Serviceable Parts; and for eight (8) months after delivery to Buyer for Overhauled Parts.
- B. Seller warrants to Buyer, Buyer's successors, assigns, customer, and users of Parts sold by Buyer that all Parts provided hereunder shall not be Counterfeit. "Counterfeit" shall mean a Part, or an item within a Part (collectively in this Article "Item(s)"), that is a copy or substitute without legal right or authority to do so, or one whose material, performance, or characteristics are knowingly misrepresented by Seller. Counterfeit Parts include, but are not limited to Items which: (i) do not contain the proper internal construction (die, manufacturer, wire bonding, etc.) consistent with the ordered Items; (ii) have been used, refurbished, or reclaimed, but represented as new; (iii) have a different package style or surface/plating than the ordered Items; (iv) have not successfully completed the original manufacturer's full production and test processes, but have been represented as completed; or (v) are sold with modified labeling or markings intended to misrepresent the form, fit, function, or grade of the Item. Seller shall

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immediately notify Buyer if Seller becomes aware or suspects that it has furnished Counterfeit Items. When reasonably requested by Buyer, Seller shall provide Original Equipment Manufacturer documentation that authenticates traceability of the affected Parts to the applicable OEM. In the event that Parts delivered under this Order constitute or include Counterfeit Parts, Seller shall, at its expense, promptly replace such Counterfeit Parts with genuine Parts conforming to the requirements of this Order. Notwithstanding any other provision in this Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including without limitation Seller's costs of removing Counterfeit Parts, of reinserting replacement Parts, and of any testing necessitated by the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity, or other provisions under this Order. Seller shall include the provisions of this paragraph or equivalent provisions in lower tier subcontracts for the delivery of Parts that will be included in or furnished as Parts to Buyer.

- C. Seller warrants to Buyer that any Services or technical data provided by Seller under this Order shall, for fourteen (14) months from delivery to Buyer: (i) have been performed or prepared in a professional and workmanlike manner and according to best industry standards and practices; (ii) are suitable for the purposes intended whether expressed or implied; and (iii) are in compliance with all applicable specifications and performance requirements.
- D. Delivery, inspection, test, use of, or payment for the Goods furnished hereunder shall not affect Seller's obligation under this warranty. Seller agrees, without expense to Buyer, to promptly repair or replace any Goods not conforming to the foregoing warranty.
- E. Seller shall be liable for Buyer's costs, expenses and damages arising from or relating to Goods breaching the warranty, including Counterfeit Parts, and including but not limited to labor, transportation, expediting, removal, disassembly, failure analysis, fault isolation, reassembly, reinstallation, re-inspection, retrofit, and any and all other such corrective action costs incurred by Buyer.
- F. Transportation of replacement Parts, return of nonconforming Parts, and re-performance of Services shall be at Seller's expense.

**V. PRODUCT SUPPORT**

- A. Seller shall, for a period of ten (10) years from delivery of the Parts to Buyer, maintain the ability to provide product support for the Parts, which shall include, but is not limited to, assuring that subcomponents and materials are available, maintaining tooling and other production capability, and re-engineering or servicing of Parts to address obsolescence.
- B. In the event that the parties enter into a product support agreement ("Product Support Agreement" or "PSA") relating to the Parts provided under the Order, the PSA shall govern the specific terms of Seller's product support obligations.

## **VI. COMPLIANCE WITH LAWS; BUSINESS CONDUCT AND ETHICS**

- A. Seller shall comply with all national, state, provincial and local laws, ordinances, rules, and regulations applicable to the performance of the Order, including those relating to import/export regulation, pollution control, waste disposal, hazardous substances, and protection of the environment; and Seller shall defend, indemnify, and hold Buyer harmless from and against any and all liability due to the Seller's failure or alleged failure to so comply.
- B. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities), 41 C.F.R. Part 60-250.5(a) (covered veterans), and 41 C.F.R. Part 60-741.5(a) (individuals with disabilities), and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into these Terms and Conditions, and Seller shall comply with these requirements at all times during the performance of the Order.
- C. Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Accordingly, Seller shall comply with Section 1502 of Dodd-Frank and its implementing regulations. In particular, Seller has in place a supply chain policy and processes to undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Products it provides to Buyer; (2) due diligence of its supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (3) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Seller shall take all other measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.
- D. Seller represents and warrants that the Parts and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of any country or jurisdiction in the world, including but not limited to the United States, the European Union ("EU"), and nations adopting legislation similar to that of the EU, and that nothing prevents the sale or transport of the Parts or substances in Parts in any country or jurisdiction in the world and that all such Parts and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under the EU Registration, Evaluation, Authorization and Restriction of Chemicals regulation ("REACH") if pre-registration, registration and/or authorized is required.

In addition to complying with REACH, the EU's regulation of chemical substances (as is required under this Section), Seller shall timely provide Buyer with all relevant information on the Parts so that the intent of REACH is met for communicating with downstream users as

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defined in Article 3(13) of REACH (any person established in the EU who uses a chemical substance in the course of his industrial activities; the definition does not include the manufacturer, importer, distributor, or consumer), and in any case, Seller shall provide all information necessary for the Buyer and/or any downstream user to timely and accurately fulfill their obligations under REACH.

Seller shall bear all costs, charges, and expenses related to pre-registration, registration, evaluation, and authorization under the REACH regulation of the chemical substances that are the subject of the Order.

- E. Seller shall at the earliest practicable time notify Buyer in writing if Seller is (i) suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. government, or (ii) listed or is proposed to be listed by the U.S. government in any “denial orders” as a “blocked person,” “specially designated national,” or “specially designated terrorist” for U.S. export administration purposes (collectively, “Debarment”). Debarment of Seller shall be cause for termination for default pursuant to the provisions set forth in these terms and conditions.
- F. Seller has not and shall not offer or give anything of value (in the form of entertainment, gifts, or otherwise) to Buyer’s employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order. Seller represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay or offer to pay any fees or commissions in connection with this Order.
- G. Seller shall adopt and comply with a policy statement or code of conduct regarding business ethics (“Code”). The Code will be suitable for Seller’s business and as a minimum will require compliance with all applicable laws and regulations. The Code shall assure a safe and healthy work environment, prohibit the use of child or forced labor, provide for the protection of the environment and minimization of waste, emissions, energy consumption and the use of materials of concern, and prohibit engagement in corrupt practices (by way of example and not limitation, facilitating, offering or paying any bribe or kickback). This provision creates no additional duties for Buyer with respect to Seller and confers no rights on third parties.

## **VII. SHIPPING/PACKING INSTRUCTIONS; IMPORT/EXPORT COMPLIANCE**

- A. Shipments Originating and Terminating in the United States – Unless otherwise specified in the Order, all shipments which originate and terminate in the United States shall be FCA Seller’s Facility (Incoterms 2010). Seller shall utilize only Buyer-designated carriers.
- B. Shipments Originating Outside the United States – Unless otherwise specified in the Order, all shipments which originate outside the United States shall be delivered FCA air terminal proximate to Seller’s Facility (Incoterms 2010). Additionally, Seller shall (i) provide Buyer a pre-alert of such shipment, via an email sent to [licensing@dercoaerospace.com](mailto:licensing@dercoaerospace.com); (ii) utilize only Buyer-designated freight forwarders, carriers, and import brokers, and (iii) turn over all necessary paperwork to such brokers for clearance.

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- C. Seller shall contact Buyer before shipping any shipments weighing more than forty (40) pounds or if the total volume of the shipment is greater than five (5) cubic feet (L x W x H divided by 1728).
- D. Notwithstanding any provision in this Order to the contrary, Seller shall employ such packaging, containment, handling, and delivery methods as necessary to (i) ensure delivery of Parts without damage or degradation and comply with all federal, state, and local laws and/or regulations; (ii) minimize the amount of non-recyclable packaging or containment materials in which the Goods are packaged and delivered; and (iii) maximize the use of reusable packaging, which Buyer can return to Seller for Seller's utilization in shipping additional Parts to Buyer.
- E. Buyer reserves the right to reject and return, at Seller's expense, any and all Parts which are not packaged and/or delivered in conformity with paragraph (D) above. At Buyer's sole option, Buyer may accept Parts not packaged and/or delivered in accordance with paragraph (D) and deduct an equitable amount from payments due to Seller.
- F. Exterior containers must be marked with the following: (i) address, (ii) Order number, (iii) part number, (iv) prime contract number, if any, and (v) any other special markings called for by this Order.
- G. All crating and pallet materials used in shipments to or on behalf of Buyer must comply with the International Plant Protection Convention's (IPPC) International Standards for Phytosanitary Measures (ISPM). Refer to the ISPM's publication Guide for Regulating Wood Packaging Material in International Trade, located on the IPPC website at <http://www.ippc.int>. All shipments must be packaged for international shipment. Failure to do so will cause Buyer to repackage and assess Seller for any associated charges. All Hazardous Materials/Dangerous Goods shipped to or on behalf of Buyer must be packaged, labeled, and shipped in accordance with and comply with International Air Transport Association (IATA) and Federal Aviation Administration (FAA) regulations, as well as any and all other applicable laws and regulations. Seller shall provide Buyer with a UN number required with hazardous materials as per IATA and FAA regulations.
- H. If a Materials Safety Data Sheet (MSDS) is required for the Parts, the Seller shall include one copy of the MSDS, and it shall be identifiable and provided with each shipment for the Parts furnished under this Order.
- I. Seller shall include with each shipment of Parts a packing slip containing: (i) the Order number, (ii) the item nomenclature/description; (iii) the item part number; (iv) the item U.S. National Stock Number (where applicable); (v) the item serial number (where applicable); (vi) the quantity of items; (vii) the item country of origin (country of manufacture); (viii) the item International Harmonized Tariff Schedule ("HTS") or Schedule B number; and (ix) the item U.S. Munitions List ("USML") or Export Control Classification Number ("ECCN").

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- J. The bill of lading must reference Order number, correct “ship to” address, and receiving well number, if applicable. An original of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer upon request.
- K. Any invoices accompanying a shipment to be imported must meet requirements imposed by the U.S. Customs and Border Protection division of the U.S. Homeland Security Department.
- L. If Seller will be the importer of record for any items required to fulfill this Order, Seller represents that Seller is a certified member of the Customs-Trade Partnership Against Terrorism (C-TPAT) initiative. If Seller fails to maintain its C-TPAT certified member status, any delays or failure to perform based on Seller’s inability to obtain imported goods due to US Customs requirements shall not be considered an excusable delay.
- M. Except for Orders for Parts to be supplied on a “build to print” basis, Seller shall, by no later than within twenty-four (24) hours of shipment, provide Buyer with the following information for all Parts: (i) the applicable USML category or ECCN; (ii) the HTS code; and (iii) the Country of Origin. If an item is controlled by the International Traffic in Arms Regulations (“ITAR”), Seller shall also advise Buyer if the item is Significant Military Equipment (“SME”), a Major Component, or subject to the Missile Technology Control Regime (“MTCR”).
- N. Seller shall strictly follow all Buyer shipping instructions and shall provide copies of the following documents to Buyer prior to shipment: (i) FAA/EASA/TCCA or other civil aircraft certification, if applicable; (ii) Commercial Shipping Invoice; (iii) Packing List; (iv) Airway Bill; (v) Foreign Sales Declaration, if applicable; and (vi) any other document required per commodity type (e.g., Bearing Summary Worksheet).
- O. If Seller is engaged in the United States in the business of exporting, manufacturing, brokering, or any other value added service of items controlled by the ITAR, Seller represents that it is registered with the Directorate of Defense Trade Controls (“DDTC”), as may be required by 22 C.F.R. 122.1 and/or 22 C.F.R. 129.3 of the ITAR, and that it maintains an effective export/import compliance program in accordance with DDTC guidelines.
- P. Seller shall not export, re-export, transfer, disclose or otherwise provide Buyer’s export-controlled technical data to any foreign persons or foreign commercial entities unless Seller receives advance, written authorization from Buyer. Any contracts entered into by Seller and foreign persons or entities in the Buyer-approved foreign country arising from or relating to this Order shall contain all of the limitations of this paragraph and shall comply with all applicable export licenses or authorizations. Upon completion of its performance under the Order, Seller and its suppliers and/or subcontractors shall destroy all technical data or return it to Buyer.

**VIII. INSURANCE**

- A. Seller agrees to secure and carry during the performance of the Order, as a minimum (i) General Liability Insurance, including Premises and Contractual Liability, in which the limit

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of liability for property damage or injuries, including accidental death, shall be no less than \$5,000,000 for any one occurrence; (ii) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the country, state, or locality in which the work or any portion of the work will be performed; (iii) Employer's Liability Insurance in the amount of \$1,000,000 for any one occurrence; (iv) if Seller vehicles are used on Buyer's premises and/or used to accomplish work under the Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence; (v) if Seller has Buyer's materials or equipment in its care, custody or control, All Risk Property Insurance in an amount sufficient to meet or exceed the replacement value of such materials or equipment; and (vi) if Seller is performing professional services for Buyer, Professional Liability Insurance with a limit of not less than \$3,000,000.

- B. Such insurance shall be issued by companies authorized to do business under the laws of the applicable governmental authority for the place in which Seller is located, shall be in form satisfactory to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Seller's performance of the Order. For Orders in excess of \$100,000, certified copies of certificates evidencing such insurance and naming Buyer as an additional insured shall be provided to Buyer upon request within thirty (30) days after the date of this Order and within a reasonable time after any renewals or changes to such policies are issued. Any failure of Buyer to request evidence of such coverage shall in no way reduce or affect Seller's obligation to name Buyer as an additional insured.

## **IX. DELAYS AND TERMINATION**

- A. Seller shall be liable for its failure or delay in making deliveries, including, but not limited to, late delivery penalties or liquidated damages paid by Buyer to its customer, except when such failure or delay is due to a cause beyond the control and without the fault or negligence of Seller, provided that Seller gives to Buyer prompt notice in writing when it appears that such cause will result in failure or delay in making deliveries under this Order. In the event of any such failure or delay, Buyer shall have the right, at its option and without any liability to Seller, to cancel this Order (in whole or part) by notice in writing to Seller. Correspondingly, Buyer shall be excused for failure or delay in performance herein due to any cause beyond its control.
- B. If (i) Seller fails to make any delivery of Goods in accordance with the Order; (ii) Seller fails to comply with any other requirement of the Order and does not remedy such failure after notice and opportunity to cure; (iii) Seller fails to make progress in performance of the Order such that performance of the Order in accordance with its requirements is endangered; or (iv) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment for the benefit of creditors, then Buyer may, in addition to any other right or remedy provided herein or at law or equity, by written notice to Seller, terminate for Seller's default all or any part of the Order without further liability and may purchase substitute Goods elsewhere. Seller shall be liable to Buyer for all costs, expenses and damages incurred by Buyer as a result of Seller's default and termination. Buyer may require Seller to transfer title and deliver to Buyer



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any Goods, whether complete or incomplete, materials, supplies, parts, tools, dies, jigs, fixtures, plans, drawings, information, data and contract rights as Seller has produced or acquired for the performance of the Order, and any technology or information necessary for production of Goods by an alternate source.

- C. If, after notice of termination under this section, Buyer determines that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a termination for convenience.
- D. Buyer may terminate all or any part of the Order for its convenience at any time by thirty (30) days written notice to Seller. Buyer's sole obligation in the event of such termination for convenience will be to pay Seller the Order price for completed Goods that have been accepted by Buyer.

**X. INTELLECTUAL PROPERTY**

- A. "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- B. Buyer shall own all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with this Order ("Foreground Intellectual Property"). Seller hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Seller agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's rights in Foreground Intellectual Property, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer, at Buyer's expense, to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Seller agrees that, for any works of authorship created by Seller or any employees or any others used by Seller in the course of this Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Buyer, and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- C. Seller shall indemnify and hold harmless Buyer, its affiliates, subsidiaries, agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging (i) infringement or violation of any Intellectual Property rights or license, related to the manufacture, use or sale of any Goods delivered or performed in connection with

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this Order; or (ii) improper, inaccurate, false and/or invalid patent, copyright and/or trademark markings. If the manufacture, use or sale of the Goods is enjoined by a court, if delivery is precluded by a government entity, or should Seller refuse to supply Goods to avoid a potential third party claim, Seller shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to use or sell such Goods; (ii) modify or replace such Goods with equivalent non-infringing Goods; or (iii) provide such other solution acceptable to Buyer. Seller shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Goods. Seller shall refund to Buyer the purchase price of any such Goods that Buyer is prohibited from using or selling.

- D. Notwithstanding the foregoing, nothing in this Section X shall be construed or interpreted to limit or restrict in any way the right of the USG in regards to data it owns or has a right to use.

## **XI. PROPRIETARY INFORMATION**

- A. "Proprietary Information" shall mean all information, knowledge or data (including, without limitation, financial information; business information; specifications; designs; procedures; analyses; reports; products, equipment, and materials) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer, or Buyer's parent or affiliates or (ii) conceived, created, acquired, or first reduced to practice in connection with this Order.
- B. Seller shall: (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose; (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information. Seller may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, affiliates, agents, or subcontractors of the Seller who have a need to know such Proprietary Information for the purposes of the Order, and who have executed a written agreement with the Seller obligating such entity or person to treat such information in a manner consistent with the terms of this section.
- C. The Order shall not restrict the Seller from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of the Seller or a third party; (ii) is received by the Seller without restriction as to disclosure by the Seller from a third party having a right to disclose it; (iii) was known to Seller on a non-confidential basis prior to the disclosure by the Buyer; or (iv) was independently developed by employees of the Seller who did not have access to any of Buyer's Proprietary Information. Seller may disclose Proprietary Information that is required to be disclosed pursuant to judicial process, but only if Seller promptly provides notice of such process to Buyer. Seller shall fully cooperate with Buyer in Buyer seeking a protective order or otherwise contesting such a disclosure.
- D. Obligations in this section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act

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or omission of the Seller or any third party. Unless required otherwise by law or the Order, the Seller shall promptly return, or otherwise dispose of Proprietary Information as the Buyer may direct. Buyer shall have the right to audit all pertinent documentation of the Seller, and to make reasonable inspection of the Seller's premises, in order to verify compliance with this section.

- E. Buyer may disclose all Seller information to (i) Buyer's parent, affiliates, subsidiaries, and employees, as needed in conjunction with this Order, including for the purposes of qualification and technical part validation; and (ii) to the FAA, the EASA, any other governing international airworthiness certifying authority, and any other department or agency of the U.S. Government, for the purpose of obtaining necessary government approvals.
- F. Notwithstanding the foregoing, nothing in this Section XI shall be construed or interpreted to limit or restrict in any way the right of the USG in regards to data it owns or has a right to use, or to prohibit or otherwise restrict Seller or its employees from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information under the procurement.

## **XII. BUYER-FURNISHED PROPERTY**

- A. All materials, drawings, information and data furnished by Buyer to Seller, or made or procured by Seller for the purpose of the Order, shall be and shall remain the property of Buyer. Buyer's property in Seller's custody shall be clearly marked as such, and segregated and stored separately from, Seller's or third party property. Seller shall maintain Buyer's property free of all liens, claims, encumbrances and interests of third parties, and Seller shall be responsible for loss of and/or damage to Buyer's property while at all times in Seller's care, custody or control. Seller shall not substitute any other property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or Parts developed, manufactured or created with the aid of Buyer's property, and will not use Buyer's property or any property or Parts developed, manufactured or created with the aid of Buyer's property, except in fulfilling Buyer's Order(s).
- B. Upon Seller's completion of the Order, or upon Buyer's written request, Seller will prepare Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.
- C. Notwithstanding the foregoing, nothing in this Section XII shall be construed or interpreted to limit or restrict in any way the right of the USG in regards to data it owns or has a right to use.

## **XIII. PRIME CONTRACT REQUIREMENTS**

- A. If Buyer notifies Seller that Goods are in support of a prime contract with the United States government, Seller shall comply with all those Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation Supplement ("DFARS") provisions required by law or regulation, or as necessary for Buyer to comply with the requirements of its prime contract

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and United States government procurement regulations, including, without limitation, certification of current cost or pricing data (“Flowdowns”). Where applicable, Buyer shall provide Seller with Order-specific Flowdowns, which shall be appended hereto and incorporated herein by reference.

#### XIV. MISCELLANEOUS PROVISIONS

- A. **Duty to Proceed.** Seller shall proceed diligently with the performance of this order. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to the Order shall excuse the Seller from proceeding.
- B. **Assignment.** Seller shall not subcontract all or substantially all of the work required by this Order without Buyer’s prior written consent. Seller shall not assign this Order, in whole or in part, without Buyer’s prior written consent.
- C. **Partial Invalidity/Unenforceability.** If in any instance any provision of the Order shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.
- D. **Right of Entry.** Seller shall permit Buyer, its customers, and/or any applicable regulatory agencies, the right to enter Seller’s premises and/or controlled facilities at any level of the supply chain during normal business hours for the purpose of ensuring Seller’s compliance with the terms and conditions of any Order, including but not limited to inspection of work, records and materials.
- E. **Applicable Law and Forum.** This Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of Wisconsin, USA, without regard to conflicts of law principles; however if any claim involves the Federal Government as a party, such claim shall be governed exclusively by federal law. The exclusive forum for any claim, action or lawsuit arising from or relating to this Order will be the state or federal courts of Wisconsin. The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.
- F. **Cumulative Rights and Remedies.** Seller shall be liable to Buyer for any damages incurred by Buyer arising from or relating to Seller’s acts or omissions under the Order. The rights and remedies herein reserved to the parties shall be cumulative and additional to any other rights and remedies available at law or equity.
- G. **Publicity.** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Goods ordered by Buyer, or use any trademarks or trade names of Buyer in Seller’s advertising, recruiting, or promotional materials.

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- H. **Industrial Cooperation/Offset.** Buyer may use all or any part of the value of this Order for offset purposes, including but not limited to: (i) fulfilling Buyer's (or Buyers' affiliates) offset or industrial cooperation obligations; and (ii) retaining credits granted for use in satisfying future offset obligations. Seller agrees to assign to Buyer all offset and countertrade credits earned by Seller as a result of this Order and to cooperate with (and to furnish any certificates or other documents reasonably required by) Buyer in fulfillment of Buyer's offset obligations.
- I. **Waiver.** Any failure by either Party to exercise any right granted by the terms and conditions of this Agreement shall not be construed as a waiver of such right or any other rights under this Agreement, and shall in no way affect the subsequent exercise of such right or of any other rights under this Agreement by such Party.
- J. **Survival.** All rights, obligations and duties under the Order, which by their nature or by their express terms extend beyond the performance, expiration or termination of the Order, including but not limited to warranties, indemnifications, maintenance of insurance, and perfection and/or protection of Intellectual Property and Proprietary Information, shall survive the performance, expiration or termination of the Order.
- K. **Indemnification.** Seller covenants and agrees to defend, indemnify, protect, and hold harmless Buyer, its officers, directors, employees and agents ("Indemnified Person") from and against any liability, claim of liability, allegation, judgment, cost, expense (including reasonable attorneys fees), cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Seller's performance under this Order, howsoever arising, including, without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship or Service, or strict liability, unless caused by the sole negligence of the Indemnified Person.
- L. **Order of Precedence.** If there are any inconsistencies or conflicts regarding the terms, specifications, or standards applicable to the Order, precedence shall be given in the following order: (i) any FAR, DFARS or other federal acquisition clauses and provisos that apply to the Order; (ii) the requirements on the face sheet of the Order including quality, price, specifications, shipping, drawings, statement of work, and specific modifications to these terms and conditions; (iii) the terms of any other agreement specifically referenced and incorporated into the Order (by way of example and not limitation, a memorandum of agreement, long-term agreement, master terms agreement, PSA, etc.); and (iv) these terms and conditions, including appendices, exhibits and/or attachments hereto.
- M. **Orders in Support of USG Contracts.** Except as may otherwise be expressly set forth in these terms and conditions or other terms applicable to the Order, without the express consent of the USG, Seller shall not acquire any direct claim or direct cause of action against the USG.
- N. **Modification of Terms and Conditions.** Any modification of these terms and conditions shall only be valid under the following circumstances: (i) a clear and conspicuous marking of the document to notify the reader of negotiated and agreed upon modifications in substantially the following format – Derco Aerospace, Inc./Derco Repair Services, Inc. Standard Terms and

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Conditions of Purchase, Rev. [insert current revision date], as modified and agreed to by Buyer and Seller on [insert final agreement date]; and (ii) signatures of duly authorized representatives of the parties on the final page of the modified terms and conditions. The parties agree that any other terms and conditions not bearing the requirements identified in this paragraph shall be treated as unmodified from the Derco Aerospace, Inc./Derco Repair Services, Inc. Standard Terms and Conditions of Purchase revision in effect on the date of the Order.

- O. **Entire Agreement.** This Order constitutes the entire agreement between Buyer and Seller and supersedes all prior oral and written agreements, communications and negotiations between the Parties with respect to the subject matter hereof.

**THESE TERMS AND CONDITIONS CONSTITUTE THE STANDARD TERMS AND CONDITIONS OF PURCHASE FOR DERCO AEROSPACE, INC., AND DERCO REPAIR SERVICES, INC., AND ARE INCORPORATED IN THEIR UNMODIFIED ENTIRETY BY REFERENCE INTO ALL DERCO ORDERS ISSUED TO SELLER UNLESS OTHERWISE SPECIFIED THEREON. ANY MODIFICATION OF THESE TERMS AND CONDITIONS SHALL REQUIRE THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.**

[END OF DOCUMENT]