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If any provisions of the Order including these Terms and Conditions become void or unenforceable, the other provisions will remain valid and enforceable. Waiver of one or more provisions of these Terms and Conditions by Buyer will in no way act as a waiver of any other provision herein.

**(20) ASSIGNMENT**

- (A) Neither the Order nor any interest herein nor any claim hereunder will be assigned by Seller without the prior written consent of Buyer. This Agreement may be assigned by the Seller to a person which is an affiliate or a successor in interest to substantially all the business operation of the Company with Buyer's written consent. Upon such assignment, the rights and obligations of the Seller shall become the rights and obligations of such affiliate or successor person. An assignment without Buyer's written consent is ineffective and void. No such consent will be deemed to relieve Seller of its obligations to comply fully with the requirements of the Order. Seller may, however, without Buyer's consent, assign the rights to be paid monies due or to become due to a financing institution if the following conditions are met:
  - (i) Buyer must continue to have the right to exercise any and all of its rights under, settle any and all claims arising out of, and enter into amendments hereto, without notice to or consent of the assignee;
  - (ii) the entire amount of said monies is assigned to a single assignee and
  - (iii) Buyer is given notice of the assignment and all invoices submitted by Seller contain adequate reference to the assignment.
- (B) Any costs associated with Buyer's efforts to approve an assignment including, but not limited to, Quality Assurance or financial audits, will be borne by the Seller. Should the assignment be unacceptable to the Buyer, this Order will be terminated and the provisions of the Termination for Default clause herein will apply.

**(21) BOOKS AND RECORDS**

Seller must provide authorized representatives of cognizant Government Audit Agencies (such as but not limited to DCAA) or a mutually agreed

upon third party auditor, reasonable access to its books, records and data which will permit the adequate evaluation of cost data, direct materials, labor hours and incorporated rates used to arrive at a price if so necessary. In addition, any proposals submitted by the Seller, pursuant to the Changes, Termination for Default, or Termination for Convenience clauses will also include sufficient information or data to determine price reasonableness. At Buyer's request, Seller shall provide, within reason, copies of documentation necessary to support an award.

**(22) QUALITY CONTROL/INSPECTION**

- (A) Seller must provide and maintain a Quality Management System in accordance with the latest revisions to AS/EN/JISQ9100. Seller agrees to permit Buyer or U.S. Government access to its facilities, quality system procedures, processes and documentation related product/service compliance to requirements. This accessibility will remain applicable to Seller in addition to any special quality assurance provisions, which may be incorporated elsewhere in the Order.
- (B) All Articles are subject to final inspection and acceptance by Buyer at destination, notwithstanding any payment or prior inspection at source. The final inspection will be made within a reasonable time, not to exceed twenty (20) calendar days after receipt of the Articles. When Buyer inspection is performed at source, Seller must provide, at no charge to the Buyer, appropriate facilities and assistance to allow the performance of the inspection. Buyer must notify Seller if any Articles delivered hereunder are rejected, and such Articles may be returned to Seller at Seller's risk and expense at Buyer's discretion. Inspection and tests by Buyer do not relieve the Seller of responsibility for defects or other failures to meet the Order's requirements. Acceptance will not be final with respect to latent defects, fraud, or gross mistakes amounting to fraud. Notwithstanding anything else in the contract terms to the contrary, Seller and Buyer expressly agree that Seller is responsible for any claims for damages, losses, expenses which specifically exclude any administrative fees referenced in paragraph E and F below, that result from Seller's failure to comply with the requirements of this clause.

- (C) The Seller must have an effective program for investigation of quality system or product deficiencies that includes utilization of a disciplined problem solving method for determining the root cause and determination of effective corrective actions that preclude recurrence of deficiencies detected by the Seller or Buyer. The Buyer may forward a request for root cause and corrective actions response from the Seller when the Buyer discovers discrepancies for which the Seller is responsible. The Seller's response must be returned to the Buyer within thirty (30) calendar days unless otherwise specified by the Buyer. The response will include the corrective action effectivity point by part number, unit serial number, ship dates into Buyer, quantity and/or manufactured date.
- (D) The Seller is responsible for compliance to all contract (e.g., engineering drawing, specification, purchase order) requirements. All documents, drawings and specifications, regardless of origin, are applicable to the Seller when specified in the contract or in documents referenced in the contract, and are required to be flowed down to all levels of the supply chain. Audit, surveillance, inspection nor tests made by Buyer, representatives of the Buyer or its customer(s), at Seller's facilities, at any sub-tier facilities, or upon receipt at Buyers facility, relieves the Seller of the responsibility to furnish acceptable products or services that conform to all contract requirements; nor does it preclude subsequent rejection by Buyer or its customers. Failure to comply with Quality System requirements or to achieve an acceptable quality performance level may result in an on-site audit or additional source inspection oversight being initiated by Buyer, at Seller's expense. Buyer reserves the right to debit Seller accounts to compensate for inspection or related activities that take place as a result of Buyer directed inspections, including source inspections being by-passed by the Seller.
- (E) As described in paragraph (B) of this clause, Buyer reserves the right to impose administrative fees if applicable dependent on the amount of rework or issues.

- (F) All rights and remedies of Buyer under the Order or at law will be cumulative, and the exercise of one will not be deemed a waiver of the right to exercise any other.

**(23) DRAWINGS**

- (A) All drawings, specifications and data furnished by the Buyer to the Seller will remain the property of the Buyer, or Buyer's client, and will not be disclosed to others by the Seller and will be used by Seller only as and to the extent required for the performance of the Order, unless otherwise approved by Buyer in writing.
- (B) No review or approval by the Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared by Seller will be construed to relieve Seller, in any way from design responsibility for the Articles to be delivered hereunder, or from responsibility to comply with the requirements of the Order.

**(24) PRODUCT ORIGIN**

- (A) Prior to or with the first shipment of Articles to Buyer, Seller must provide Buyer a statement specifying the Country of Origin, the Article name and description, Buyer and Seller part number, Harmonized (Tariff) Schedule (HTS/HS) number, the Export Control List number, and manufacturer name and location. Seller will also provide, as requested, any other documentation that is required for U.S. Customs and/or other Government agency compliance.
- (B) If the Articles provided under the Order qualify for preferential duty treatment under a Free Trade Agreement such as the North American Free Trade Agreement (NAFTA), Seller must provide Buyer's Global Trade Compliance Department with a NAFTA or other Certificate of Origin to enable Buyer to claim preferential duty treatment at the time of entry. Seller acknowledges that the Certificate will be used by Buyer as proof of eligibility for preferential duty treatment, and agrees to provide full cooperation to Buyer for any U.S., Canadian or other foreign Customs inquiries into preferential duty claims that arise out of any Article furnished under the Order. Unless Buyer requests individual Certificates for each shipment, Seller may provide annual blanket

Certificates to cover multiple shipments during the calendar year.

- (C) Seller will send Certificates of Origin or statements specifying Country of Origin to Buyer.
- (D) Seller must notify Buyer in writing of any change in the Origin of the Article.
- (E) Buyer will notify Seller in writing if Seller fails to supply documentation required under paragraphs (A) through (D) of this clause, and Seller agrees to provide Buyer the relevant documentation within thirty (30) days of receipt of notice from Buyer.
- (F) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

**(25) INVOICING AND SHIPPING**

- (A) Separate invoices indicating Order number, line item number(s), quantity, unit price and extended value are required for each Order unless Pay Upon Receipt has been established with the Seller. For international imports, seller should indicate the harmonized tariff system code for each item shipped and country of origin on the export documents related to the export shipment.

For shipments in fulfillment of ACE issued Orders, on date of shipment(s) Seller shall mail one copy of each invoice to the address below, unless a different address is provided in the face of the Purchase Order:

Ace Aeronautics, LLC, LLC  
 ATTN: Accounts Payable  
 7501 South Memorial Pkwy, Suite 204  
 Huntsville, AL 35802

- (B) Seller must comply with the Buyer's written shipping instructions shown on the Order. Premium transportation will be paid by Buyer only when specifically authorized. If delays caused by the Seller result in the need for premium transportation, the additional costs for the premium transportation are the sole responsibility of the Seller. Seller must

not prepay, insure, or declare value of any shipment made F.C.A. shipping point.

- (C) Separate packing lists are required for each Order and must accompany each shipment. The location of the packing slip must be clearly marked on the container. The complete Order number must appear on all documents.
- (D) Single Article containers will be identified with Order, part number, and quantity. When multiple Orders or Articles are combined in one container, they must be separately packaged inside that container and the packages identified as to Order, part number and quantity.
- (E) Seller must send orders in compliance with Buyer's written shipping instructions. In case of noncompliance of those instructions, Seller can be subject to a freight debit, representing the cost difference between Buyer's endorsed carrier cost and the one used by the Seller, and/or the mode of transport, and/or transit time service used.
- (F) Test reports, x-rays, certificates and other supporting documents must accompany each shipment when required by the Order.
- (G) Seller will not combine shipments destined for different ACE facilities on the same bill of lading or in the same container.
- (H) Articles will be marked in such a manner as to be readily identifiable with the part number reflected on the Order. Kits, assemblies and all parts consisting of multiple Articles, that is, hardware, pins, ACEkets, etc., must be unit packaged as a complete unit and so identified. If the Article is individually packaged, the package will be so marked. Single Articles too small to be separately identified will be separated into lots and tagged or bagged. Proper markings corresponding to the Order description and part number must be applied to the tags or bags for handling and storage purposes.
- (I) When required by Buyer, Seller will provide bar coded shipping labels with each shipment.
- (K) Unless otherwise specified, the price stated in the Order includes the costs of preparing and packing for shipment, container marking, and furnishing packing lists and test reports.
- (L) For orders issued by ACE, in addition to the above, for Seller outside of the U.S.A.:

- (i) Seller shall pay all taxes and import or export duties of any kind outside of the U.S.A., including those taxes or duties that may be imposed or assessed on any property furnished by the buyer (data, information, materials, components or tooling), and all fines or penalties imposed by reason of seller's failure to pay such taxes or duties. All such taxes and duties, existing, new, or increased, are included in the price stated in the Order.
- (ii) Seller shall, at its expense, obtain all necessary export licenses, approvals, and authorizations required to export articles. Seller shall notify Buyer, without delay, of any obstacles or requirements which may delay Seller's exportation of articles.
- (iii) The following categories of Articles may require an import license in the U.S.: articles made of steel, firearms, artillery projectors, ammunition, launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, mines, vessels of war and special naval equipment, tanks and military vehicles, aircraft and spacecraft, toxicological agents and equipment, and radiological equipment, nuclear weapons design and test equipment, submersible vessels, oceanographic and associated equipment, and other equipment which has substantial military applicability and which has been specifically designed or modified for military purposes. Aircraft components, although specifically designed for use on military aircraft, do not require an import license. If Articles covered by the Order fall into any of these categories, Seller must verify with Buyer that a valid U.S. import license is in effect prior to shipment.
- (iv) All wood packaging material must conform to ISPM 15 Standards as required by U.S. Customs.
- (v) Each package in the shipment will contain the following, in English, on the outside of the container, for the purposes of clearing U.S. Customs: (1) A packing list listing the contents of that package. (2) The commercial invoice as detailed in paragraph (A). (3) Certificates of origin as described in the Product Origin clause, paragraph (A), if applicable.
- (vi) For ocean shipments under U.S. Customs regulations, the following information must also be emailed or faxed to Buyer's authorized representative, at least 72 hours prior to loading the shipment onto the vessel: (1) Seller name and address, (2) Buyer name and address, (3) Importer of Record number, (4) Consignee number(s), (5) Manufacturer/Supplier name and address (if different from Seller), (6) Ship to Party name and address (if different than Buyer), (7) Country of Origin/Country of Manufacture, (8) Commodity Harmonized Tariff Schedule of the United States (HTS or HTSUS) number, (9) Container stuffing location, and (10) Consolidator (who stuffed the container). The manufacturer/supplier, country of origin, and HTS number must be linked to one another at the line item level.
- (vii) All full truckloads coming from USA must undergo a seven-point inspection prior to stuffing to verify physical integrity. The seven-point inspection includes: front wall, left side, right side, floor, ceiling, inside/outside doors, outside/undercarriage. Containers must be sealed using high security seals, and the seal number must be noted on the commercial invoice and packing lists.
- (M) If Seller fails to comply with invoice, packing, or shipping instructions, title and risk of loss will not pass to Buyer until acceptance of Articles.

**(26) GRATUITIES**

- (A) Seller (or any agent or representative of Seller) will not offer or provide gratuities to any employee of Buyer. Failure of Seller to honor this commitment may, at Buyer's option, result in immediate termination of the Order in accordance with the Termination for Default clause, without provision for cure.
- (B) Seller is prohibited from providing, offering, or attempting to offer kickbacks or soliciting or accepting kickbacks. Seller

must have and follow procedures designed to prevent and detect possible violations, shall report in writing and telephonically any violation to the Buyer, and shall cooperate fully with any Government agency investigating a possible violation. The substance of this clause will be included in all subcontracts issued under the Order.

(C) For orders issued by ACE, Seller, by accepting the Order or any long-term contract from Buyer or performing against such Order or contract, hereby certifies, to the best of their knowledge and belief, that:

- (i) No United States government ("Federal") appropriated funds have been paid or will be paid, by or on behalf of the Seller to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, Seller shall completed and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (iii) Seller shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under sub grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

(iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.

**(27) COMPLIANCE WITH LAWS**

Seller shall comply with all applicable Federal, state, provincial and local laws, including, but not limited to, laws with respect to the protection of the environment, and Seller hereby certifies that it is in compliance with all such laws and regulations in the production of the Articles, and that the Articles themselves are compliant with all applicable laws. Seller will indemnify and hold Buyer harmless to the full extent of any loss, damage or expense, including lost profit, attorneys' fees and court costs, for any failure or alleged failure of Seller to comply with the requirements of this clause or for any release or threat of release of any hazardous substance, hazardous or solid waste, pollutant or contaminate from any site now, or in the past, owned or operated by Seller, or any site where Seller disposed of or arranged for the disposal of any hazardous substance, hazardous or solid waste, pollutant or contaminate.

**(28) HAZARDOUS MATERIAL**

- (A) Seller certifies it is in compliance with all federal, state or provincial laws, including but not limited to the U.S. Occupational Safety and Health Act of 1970 (OSHA). Furthermore, if the Articles purchased herein are considered toxic or hazardous as defined in the above set of regulations, Seller shall provide a copy of the Material Safety Data Sheet (MSDS) with each shipment or as otherwise specified on the Order.
- (B) For products manufactured or delivered from the European Union, chemical substances and preparation integrated in such products will be made only with substances pre-registered and authorized by REACH (Registration, Evaluation, and Authorization of Chemicals) regulations. This requirement is also applicable for chemical substances and preparation used in manufacturing process.

**(29) INDEMNIFICATION**

- (A) All rights hereunder will exist by agreement of the parties notwithstanding any limitations regarding indemnity and/or contribution which exists herein or under the laws of any state. Buyer and Seller expressly agree that Seller is responsible for and agrees to indemnify Buyer for any and all damages, losses, expense, attorney fees, court costs, etc., that result from incidents, accidents, injuries or deaths to any persons or damage and/or losses to property, which result in whole or in part or are alleged to have resulted in whole or in part from (a) any act or omission of Seller with respect to the products or services furnished to Buyer hereunder; (b) any claimed defect in the goods or services supplied to Buyer by Seller; and (c) any claimed negligence on the part of Buyer with respect to supervision, monitoring, directing or inspecting (i) the goods and/or services supplied by Seller; (ii) the design/manufacturing or other activities of Seller in making or supplying the goods or services.
- (B) Seller agrees, at its own expense, to defend Buyer, its directors, officers, employees, agents and successors against any and all actions, suits or other legal proceedings that may be brought or instituted upon any claim or demand alleging any claim covered by the indemnity agreement above, and to keep Buyer informed at reasonable intervals of significant developments in such actions.
- (C) If Seller does not have actual notice of a claim, Buyer agrees to give Seller prompt notice of any such claim and legal action within a reasonable period of time, after Buyer receives written notice thereof; to tender to Seller the defense and handling of any such claim and legal action, including the right to settle or compromise such claim or action at Seller's sole expense, however, Seller will not consent to the entry of a judgment with respect to any claim or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releasing the Buyer from all liability with respect thereto, without the written consent of Buyer (not to be withheld, delayed or conditioned unreasonably); and to reasonably cooperate with Seller in the defense of

every such claim or legal action at the sole expense of Seller.

**(30) INTELLECTUAL PROPERTY & INDEMNITY**

- (A) If this Order includes Articles which are for use in connection with a U.S. Government prime contract or subcontract, then this clause does not change the rights in technical data that the U.S. Government obtains pursuant to any FAR or DFARS clauses incorporated into this Order.
- (B) Seller represents and warrants that Seller has sufficient rights in all Articles, Intellectual Property, and other related items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully complete the Order.
- (C) Except as expressly authorized herein, nothing in the Order will be construed as Buyer granting Seller a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.
- (D) With respect to Articles delivered under the Order, Seller shall save Buyer, its agents, customers, and users of its products harmless from all loss, damage and liability incurred on account of any infringement or alleged infringement of a Patent, copyright, or trademark or misappropriation of a trade secret or other violation of an intellectual property right of a third party, arising out of the manufacture, sale, or use of such Articles by Seller, Buyer, Buyer's agents, customers, or users of its products. Seller shall at its own expense defend all claims, suits and actions against Buyer, its agents, customers or users of its products in which such infringement or other violation of an intellectual property right of any third party is alleged, provided Seller is notified of such claims, suits and actions. This indemnification does not apply to articles manufactured to detailed designs developed and furnished by Buyer.

**(31) OFFSET CREDIT**

- (A) Buyer represents that its business base consists, in part, of international orders, and that it must, from time to time, enter into international offset agreements to secure such orders. To the extent that the Articles ordered hereunder are

components of Buyer's products/systems sold to a foreign nation or concern or are non-recurring activities, tooling, equipment, engineering, etc. associated with Buyer's products/systems sold to a foreign nation or concern, and in the event such foreign sale includes an offset requirement, Seller will enter into good faith discussions with Buyer regarding the Seller's assumption of a proportionate share of such offset obligations.

- (B) Buyer reserves the right and declares its intention to claim credit for the value of this Order or any related or follow-on orders against any offset or industrial cooperation commitment, either present or future, that Buyer may undertake in the Seller's country. The Seller agrees to provide all reasonable information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

**(32) PUBLIC RELEASE OF MATERIAL**

Seller shall not advertise or publicize without Buyer's prior written consent, in any medium, including, without limitation, any print, broadcast, direct mailing, or any internet web site maintained by or for Seller, the fact that Seller is a supplier of products or services to Buyer. Neither Seller nor its subcontractors, suppliers or agents shall without Buyer's prior written consent (i) use Buyer's name, photographs, logos, trademarks, or any other identifying information in any such medium; (ii) use (except to communicate with Buyer) or its affiliates) any internet domain names, metatags, or electronic mail addresses containing the name "Ace Aeronautics, LLC" or the names of any product or service for which Buyer owns the trademark; or (iii) provide a link to any domain name or internet address registered to Buyer or any of its affiliates.

**(33) SET-OFF AND WITHHOLDING**

Buyer has the right of set-off against any payments due or at issue under the Order or any Order between Buyer and Seller. Buyer may withhold from payment to Seller in an amount sufficient to reimburse Buyer for any loss, damage, expense, cost or liability relating to Seller's failure to comply with any requirements of the Order.

**(34) OUTSOURCING**

Notwithstanding any other provision of the Order, Seller must not procure any of the completed or substantially completed Articles described herein without the prior written consent of Buyer.

**(35) EXPORT/IMPORT**

- (A) Articles, technical data, and software provided under the Order may be subject to the export control laws of the United States of America ("U.S."), Canada and other applicable jurisdictions. The Parties acknowledge that the export control laws of the U.S. impose restrictions on the import, export, re-export, or transfer to third countries certain categories of articles, technical data, and software. Neither Party will export, transfer, re-export, or re-transfer any articles, technical data, and software to any U.S. sanctioned countries, denied/debarred or designated parties even where the articles have been integrated into Seller's product. These restrictions apply to Seller, its employees, and any third party including, but not limited to Seller's suppliers and subcontractors. All relevant manufacturing location(s) of products subject to the Order during Seller's performance will be compliant with all applicable U.S. and other germane export and/or import laws and regulations including all U.S. Customs' Trade Partnership Against Terrorism (C-TPAT) supply chain security requirements.
- (B) The Parties acknowledge that licenses and/or permits from the relevant U.S. or foreign government agency may be required before Buyer is permitted to provide controlled Articles to Seller, before Seller is permitted to export controlled Articles to Buyer, or before Buyer is permitted to import controlled Articles from Seller. The Parties acknowledge that such licenses or permits may impose restrictions on use of the controlled articles, technical data, and/or software subject to the contract. Each Party will comply with all U.S. license and/or permit requirements and all other applicable export and import laws and regulations controlling the import and/or export of the subject controlled articles.
- (C) All technical data and software subject to the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130) or the Export Administration Regulations (EAR) (15 CFR 730-774) will be clearly marked with their applicable export classification(s) and any subsequent

information identified by either Party impacting the classification of the subject Articles will be communicated to the other Party within a reasonable time. Upon completion of performance or termination of the Order, Buyer furnished articles, technical data, and software will, at Buyer's option, be returned to Buyer.

**(36) POLITICAL CONTRIBUTIONS**

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

**(37) ILLEGAL OR IMPROPER ACTIVITY**

For Orders in fulfillment of a U.S. Government contract:

- (A) If the Government pursues action under FAR 52.203-8, "Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity" and cancels the solicitation or rescinds the prime contract to which the Order relates, and such action results from Seller's violation of the Procurement Integrity Act, 41 U.S.C. 423, Buyer may 1) rescind the Order; 2) recover from Seller all amounts paid by Buyer to Seller related to the Order; 3) recover from Seller any amounts including any penalty prescribed by law, which Buyer is required to pay ; and, 4) recover from Seller any other costs, expenses, liabilities incurred by Buyer in connection with Seller's violation of the Procurement Integrity Act.
- (B) Seller agrees to pay Buyer the amount that Buyer's price or fee is reduced pursuant to FAR clause 52.203-10, "Price or Fee Adjustment for Illegal or Improper Activity" to extent such reduction results from Seller's violation of the Procurement Integrity Act and as such act is implemented in the FAR. In the event the Government terminates for default any Buyer prime contracts under which the Order is issued, as a result of Seller's violation of the Procurement Integrity Act, Buyer will have the right to terminate the Order in whole or part.

- (C) Buyer's rights and remedies under this clause are in addition to any other rights and remedies provided by law, regulation, or under the Order.

**(38) SUSPECT/COUNTERFEIT PARTS**

- (A) Seller shall supply Articles that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic. The term also includes approved Article that has reached a design life limit or has been damaged beyond possible repair, but are altered and deliberately misrepresented as acceptable. Failure by Seller to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
- (B) If it is determined by Buyer that a suspect/counterfeit part has been supplied, Buyer will impound the items pending a decision on disposition. Notwithstanding anything else to the contrary herein, Seller shall replace such items with items acceptable to Buyer and shall be liable for all costs relating to the impoundment, removal, and replacement. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions herein. Buyer may also notify the applicable Government representatives and reserves the right to withhold payment for the items pending results of the investigation.

**(39) FEDERAL ACQUISITION REGULATION (FAR)**

- (A) If the Order contains a U.S. Government Prime Contract Number or if any of the Articles to be supplied under the Order (or any other Orders placed under the Agreement under which the Order is placed) are to be used on a U.S.



Government contract, the FAR and, if applicable, DFARS clauses listed under the **ACE Standard Purchase Order Terms and Conditions - FAR and DFARS Clause Flow-downs in Fulfillment of a U.S. Government Contract (Flow-Downs)** is incorporated herein by reference and made a part of these Terms and Conditions. The Parties agree that Sections I and III of the Flow-Downs will be incorporated in all Orders in support of a U.S. Government Prime Contract until Seller provides sufficient documentation that the Article(s) qualifies for Commercial Item status in accordance with FAR 2.101. If and when Buyer determines the Article to be a Commercial Item, then Section II will be incorporated into all Orders for that particular Article.

(B) The dates of these clauses are the dates in effect in the U.S. Government Prime Contract issued to Buyer. Unless specified otherwise, the term "Contractor" will mean "Seller," the term "Contract" will mean "Order," and the term "subcontractor" will mean Seller's subcontractors. Seller agrees to negotiate with Buyer to incorporate additional provisions beyond those identified in the Flow-Downs or to change provisions as Buyer reasonably deems necessary to comply with the applicable Prime Contract or with amendments or modifications to the applicable Prime Contract. Seller shall accept mandatory Flow-Down clauses in Buyer's Prime Contract or modifications thereto at no additional cost to Buyer.

