

MOLDTRONICS®

TERMS AND CONDITIONS OF PURCHASE

Orders are subject to the following terms and conditions:

1. **Acceptance of Order:** This order (hereinafter "Order") is Buyer's offer to Seller. Acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the terms and conditions of this Order, whether or not such term or condition will materially alter this Order. Seller's commencement of performance or acceptance of this Order in any manner shall conclusively evidence agreement to this Order as written.
2. **Shipping Terms:** All item(s) (hereinafter "Item(s)") shall be shipped as noted on the purchase order. Item(s) furnished in quantities other than that specified by Buyer on the Order are subject to Buyer's rejection and return at Seller's expense. Late deliveries are subject to Buyer's rejection and return for credit at Seller's expense at buyer's discretion.
3. **Packaging and Extras:** No charges will be allowed for transportation, packaging, packing, or returnable containers unless stated in this Order. Damage to any Item(s) resulting from improper packaging will be charged to Seller.
4. **Foreign Object Debris (FOD):** Seller shall take reasonable action to ensure that all Items are free of Foreign Object Debris, including but not limited to employee training programs, enhanced inspection processes, and implementation of FOD protection programs within the Supplier and the Supplier's suppliers. The Buyer reserves the right to request additional FOD certification as required by its customers.
5. **Specifications:** All Item(s) ordered to specifications shall comply with such specifications current as of the date of this Order unless otherwise specified by Buyer. Supplier shall flow down applicable product specifications, descriptions and requirements to sub-tier suppliers including key characteristics as required.
6. **Performance Requirements**
 - a. **Quality** Seller shall comply with Buyer's Quality Requirements Document QMF-69, incorporated herein by reference, as well as any other specifications, workmanship standards or instructions specified on any Purchase Order.
 - b. **Quality Level** Seller shall maintain a quality level of zero defects on all Item(s) shipped to Buyer.
 - c. **Quality Performance Measurements** - The Parties agree that Seller's quality performance is subject to monitoring and that failure to maintain zero defects quality performance may result in Buyer, in its sole discretion, electing to pursue any or all of the following actions:
 - d. **Corrective Action Plan:** Buyer shall request and Seller hereby agrees to prepare a corrective action analysis and recovery plan for specific part numbers ("Item(s)") that fail to meet the quality level of zero defects. The Corrective Action Plan shall define a Containment plan within three (3) days and an acceptable response including root cause analysis within ten (10) days. Seller's Management will present the corrective action and recovery plan to Buyer for approval.
7. **Forecasts** - In the event Buyer has provided Seller any delivery forecast(s), said delivery forecast(s) are being provided by Buyer without liability or obligation. Seller acknowledges and accepts that changes may occur in the delivery forecast(s) and/or quantities listed therein and Seller releases Buyer from any and all damages and claims resulting from changes to delivery forecast(s) and/or quantity changes made thereto.
8. **Item Obsolescence** - When Seller knows or reasonably can foresee that the Item(s) and/or components of the Item(s) under this Order may become obsolete, Seller shall provide Buyer at least six (6) months written notice of any such Item(s) that may be rendered obsolete. Buyer shall have the right to place additional purchase order(s) for the Item(s) and/or components of the Item(s) to satisfy the long term needs of Buyer. Twelve (12) months prior to ending the obsolete Item's production, Seller shall provide Buyer with replacement Item(s) for the obsolete Item(s) which has design parameters and specification documentation fully consistent with the obsolete Item's then current design parameters and then current specification documentation. At Buyer's request, Seller shall also make a final production run of sufficient quantity of the obsolete Item(s) to satisfy Buyer's Item life requirements for a last time buy.
9. **Schedule Acceleration/Deceleration** - Buyer may revise any delivery schedule without cost or change to the unit price stated in the applicable Purchase Order(s) at any time by providing Seller with written notice of the revised schedule.
 - a. **On-time Delivery** - Seller shall maintain an on-time delivery level of 95%. Delivery is considered to be on-time with the agreed-upon schedule date when shipments are received no more than fourteen (14) days ahead or zero (0) days after the on-dock due date.
 - b. **Delivery Performance Corrective Action** - Should Seller fail to meet the Delivery Performance Improvement Plans, Seller agrees to take the following corrective actions: Seller will prepare a corrective action analysis and recovery plan for all part numbers that fail to meet the delivery performance improvement plan.
10. **Remedies** - The parties agree that failure to meet the Performance Requirements in this Article 5 may render Seller as a non-preferred supplier, in the sole discretion of Buyer, which can be considered as cause for re-negotiation of this
 - a. Order or termination. Additionally, the following remedies are also available to Buyer:
 - b. Seller shall reimburse Buyer for all costs and expenses in connection with providing Seller and/or Seller's sub-contractors technical, quality, or manufacturing assistance beyond that which Buyer would customarily provide to Seller or Seller's subcontractors on a day-to-day basis. This shall include but not be limited to, Buyer provided training and support requested by Seller or as provided by Buyer to assist in resolving Seller non-performance issues.
 - c. Seller shall reimburse Buyer for any such assistance at the established Buyer internal wage rate, which shall include fringe benefits, multiplied by the estimated hours recorded by Buyer, plus the estimated material costs associated with providing such assistance. In addition, Seller shall, at Buyer's request, pay for normal and customary expenses relating to salaries, living expenses, travel and any other reasonable expenses related to the provision of technical services.
 - d. Seller shall pay liquidated damages in the amount of 0.25% of the value of the delayed Item(s) for each calendar day of delay in delivery of the Item(s) commencing on the day following the due date found on the applicable Purchase Order up to a total of 10% of the value of the of the delayed Item(s), as indicated on the Purchase Order.
 - e. Notwithstanding the foregoing, Buyer reserves all its rights and remedies at law or in equity.
11. **Business Continuity** - During the term of this Order, Seller shall annually identify and review the risks that could significantly impact Seller's ability to meet its performance obligations under this Order and take reasonable loss prevention actions to reduce the frequency and/or severity of the impact of the risk. In addition, Seller shall develop and maintain actionable plans and strategies to limit any disruption of its performance obligations to a period not greater than two (2) weeks. Such plans and strategies shall include an annually updated business continuity plan in general conformance with the NFPA 1600 version 2010 and British Standard (BS) 25999-2 version 2007 or any standards that replaces either. The business continuity plan should identify the steps necessary to recover critical product/service-related functionality including, but not limited to, business activities, technologies, personnel and other resources. Seller shall allow a formal audit by Buyer of Seller's loss prevention and business continuity program.
 - a. **Changes:**
 - b. Buyer may, without notice to sureties, in writing, direct changes within the general scope of this Order in any of the following circumstances: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and if this Order includes services, (vi) description of services to be performed; (vii) time of performance (i.e., hours of the day, days of the week, etc.); and (viii) place of performance. Seller shall comply immediately with such direction.
 - c. If any change increases or decreases the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in this Order's price or schedule, or both, to reflect such increase or decrease, and Buyer shall modify this Order in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment hereunder to Buyer in writing within twenty-five (25) days and deliver a fully supported proposal to Buyer within sixty (60) days after Seller's receipt of such direction. Buyer may, at its sole, absolute discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of such

- property.
- d. Buyer may examine Seller's pertinent books and records to verify the amount any claim. Failure of the Parties to agree upon such requested adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- i. If Seller considers that Buyer's conduct (including any written or oral order) constitutes a change, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending written direction from Buyer, Seller shall take no action to implement any such change.
- ii. The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformity in any Item(s) furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein. Nothing in this Article 6, shall excuse the Seller from proceeding without delay to perform this Order.
12. **Payment:** All payments for Item(s) delivered to Buyer hereunder shall be made by Buyer to Seller in accordance with the terms and conditions of this Order. Payment shall be made on a 45 days from receipt of the packing slip basis according to the information set forth on the packing slip or shipping documents which must be enclosed by Seller with the Item(s). Such information may include, without limitation, the Order number, part number or description, pricing, and total quantities, which information Buyer will verify for payment upon receipt of such Item(s). Accordingly, unless otherwise specified and agreed to with the Buyer's purchasing representative, Seller agrees that
- a. (A)SELLER HEREBY FULLY WAIVES, RELINQUISHES AND RELEASES BUYER FROM, AND AGREES TO INDEMNIFY AND HOLD HARMLESS BUYER AGAINST, ANY AND ALL POTENTIAL CLAIMS OR CAUSES OF ACTION FOR AN "ACCOUNT STATED", AND/OR ANY AND ALL OTHER CLAIMS OR CAUSES OF ACTION WHATSOEVER WHICH IN ANY MANNER ARISE OUT OF, OR IN CONNECTION WITH, ANY FAILURE OR REFUSAL BY BUYER TO REVIEW, OR RESPOND TO, ANY STATEMENT OR INVOICE RELATING TO THIS ORDER.
13. **Warranty:**
- a. Seller warrants for a period of sixty (60) months from the date of delivery to Buyer that Item(s) supplied by Seller hereunder shall be of merchantable quality, free from any security interest or other lien or encumbrance, free from any defects, whether patent or latent in material and workmanship and conform to Buyer's specifications and to all drawings, samples or other descriptions furnished or adopted by Buyer. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance, and payment for the Item(s) and shall run to Buyer, its successors, assigns and customers. Buyer may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming Item(s). Seller shall be responsible for the cost of shipping goods that are: a) not as warranted and are returned to Seller; and b) supplied by Seller to Buyer as replacements or repairs to those described in (a). Item(s) required to be corrected or replaced shall be subject to the terms of this Article 8, and the Article entitled "Inspection and Acceptance" in the same manner and to the same extent as Item(s) originally delivered under this Order, but only as to the corrected or replaced Item(s).
- b. A "Counterfeit" item is an item, or any component thereof, produced, altered or otherwise misrepresented to resemble another item, or any part thereof, without authority or right to do so; including but not limited to, any item that is produced or altered to result in Buyer being misled or defrauded through the presentation to Buyer of such item as original, new, genuine or otherwise from a source other than the actual source of such item.
- i. Seller represents and warrants to Buyer that Seller has in place, and will maintain in place throughout the duration of this Contract, Agreement or Order, as applicable, written policies and procedures which will adequately preclude, or detect and remove, Counterfeit items and components from any shipment to Buyer. These policies shall include, without limitation, Seller's oversight and auditing of Seller's suppliers. Seller further represents and warrants that it will provide Buyer only with items and components that have been sourced from the Original Component Manufacturer (OCM) or the OCM's authorized distributor, unless Buyer has previously authorized a different source, in writing. Within ten (10) days after Seller's receipt of a request from Buyer, Seller shall provide Buyer with written documentation setting forth such policies, procedures and authorizations. Additionally, within five (5) days after Seller's receipt of a request from Buyer, Seller shall provide accurate and complete records regarding the sources and history of production and distribution of all such items and components sold by Seller to Buyer.
- ii. If Buyer, in its sole discretion, determines that any items or components received from Seller are, or may be, Counterfeit ("Suspected Counterfeit Parts"), Buyer shall notify Seller in writing of such determination. Seller agrees that Buyer shall have no obligation to return, or pay for, any such Suspected Counterfeit Parts. In addition, Seller also agrees that within ten (10) days after Seller's receipt of such notice, Seller shall remit to Buyer all payments previously made to Seller for such Suspected Counterfeit Parts. Seller further agrees that it shall indemnify, defend, and hold harmless Buyer from and against any claims, actions, proceedings, judgments, penalties, fines and/or other losses of any kind arising out of or in connection with any such Suspected Counterfeit Parts. Prior to Seller's acquisition of any items, or components thereof, that will be included in any transaction between Seller and Buyer, Seller shall flow down the requirements of this Article to all entities from which it receives such items, or components thereof, and shall be fully liable to Buyer for all such entities' compliance with such requirements.
- iii. SELLER SHALL WARRANT THAT ITEMS SUPPLIED BY SELLER ARE NEW UNLESS SPECIFICALLY APPROVED BY BUYER IN WRITING. ITEMS SHALL NOT BE SURPLUS, RECONDITIONED, RECOVERED OR REMANUFACTURED UNLESS APPROVED BY BUYER IN WRITING.
- iv. Seller shall reimburse Buyer for all consequential damages and expenses associated with correcting the defect, failure, authenticity and conformance of the Item(s) including field support, logistics, repair, refurbishment, exchange and any other consequential costs associated with correcting the defect, failure, authenticity and conformance at either Buyer's location or at Buyer's Customer location(s).
14. **Inspection and Acceptance:** All Item(s) provided pursuant to this Order by Seller or Seller's subcontractors shall be subject to inspection and test at all reasonable times and places, including the period of manufacture, by Buyer and Buyer's customers. All Item(s) are also subject to final inspection and acceptance at Buyer's plant or other specified place of delivery notwithstanding any payments or other prior inspections. Notwithstanding any other terms and conditions of this Order, Seller shall be responsible to correct, at its expense, all latent defects, which cannot be discovered by Buyer through reasonable inspection methods or time of use.
- a. **Special or Outside Process Suppliers:** In cases where the Item is a service, tangible or intangible, the Seller shall maintain National Aerospace and Defense Contractors Accreditation Program (NADCAP) certification and/or AS9100:2009 Revision C third party certification. If the Seller does not maintain or is not in active pursue one of these certifications during the duration of the service, the seller shall comply with AS9100:2009 Rev C Section 7.5.2 Validation of Processes for Production and Service Provision for all work completed under this order.
15. **Cancellation/Termination:** Buyer shall have the right to cancel/terminate this Order or any part thereof at any time:
- a. **For Convenience** – Upon receipt of a notice of cancellation/termination from Buyer, Seller shall stop work and immediately take the necessary action to ensure that all work under the Order shall cease and to the extent specified in Buyer's notice of cancellation/termination, that all subcontracts and orders are forthwith cancelled/terminated immediately. Seller shall also reassign to other customers, all in-process material and components relating to the terminated portion of the Order. Seller shall deliver to Buyer, any completed Item(s), parts, assemblies and components which are not so reassigned. The terms of this Section 10.1 shall not limit or affect the right of Buyer to cancel /terminate this Order for Cause under Section 10.2, and shall not apply to a breach of contract. In case of cancellation/termination by Buyer of all or any part of this Order without cause, any cancellation/termination claim must be submitted to Buyer within thirty (30) days after the effective date of cancellation/termination. Seller shall maintain complete and accurate records of cancellation/termination claims, which shall support Seller's claimed costs. Such records shall be accessible for verification through audit and analysis by Buyer. Buyer's maximum liability shall be limited to the following:
- i. Payment for those Item(s) already delivered and accepted by Buyer plus the proportionate part of the unit price for those Item(s) in the process of manufacture, inspection, or test pro-rated to the state of their completion by Seller. Seller shall certify, with respect to all Item(s) of cancellation/termination inventory included in the cancellation/termination claim, the costs of which were taken into account in arriving at the amount of the cancellation/termination claim. Certification shall establish that all such Item(s) are properly allocable to the terminated portion of the Order, that such Item(s) are not in excess of the reasonable quantitative requirements of the cancelled/terminated portion of the Order and that such Item(s) do not include any Item(s) reasonably usable without loss to Seller on its other work.

- ii. In no event shall Seller be entitled to any amount which, taken together with monies paid or owing under the Order, shall exceed the value of the cancelled/terminated Order.
 - iii. Seller shall have no claim for any damages, or loss of profit, arising out of any termination for convenience.
 - b. **For Cause** — Buyer may by written notice to Seller, without prejudice to any other rights or remedies provided under this Order, by law or in equity, terminate this Order in whole or in part in any of the following circumstances:
 - i. If Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
 - ii. If Seller fails to perform the work or deliver the Item(s) in accordance with the performance requirements or delivery schedules specified herein or any extension thereof;
 - iii. If Seller fails to comply with **Article 30**; or
 - iv. If Seller: 1) fails to perform any of the other terms of this Order; or 2) fails to make progress as to endanger the performance of this Order in accordance with its terms, and in either of the two circumstances enumerated in Sections 10.2(a) or 10.2(b), does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure. In the event Buyer terminates this Order in whole or in part as provided in this Section 10.2, Buyer may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs, reasonably incurred for such similar supplies or services; provided that Seller shall continue the performance of this Order to the extent not terminated under the terms of this Article.
- 16. Release of News Information and Advertising:** Seller shall not, without the prior written consent of Buyer (a) make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this Order, or (b) in any manner advertise or publish the fact that Buyer has placed this Order.
- 17. Intellectual Property:** All information and data, regardless of form, created, derived or designed in the performance of or delivered under this Order, as well as any information, documentation, and/or data provided to Seller by Buyer, shall be and remain the sole property of Buyer. Seller shall keep all information and data generated pursuant to this Order in confidence and not disclose or use it for any purpose other than in performing this Order, except with Buyer's prior written approval. In the event that the copyright in any data and/or information generated in the performance of this Order does not vest in Buyer by law, Seller hereby assigns and agrees to assign the copyright in all such data and information to the Buyer. Seller assigns to Buyer the entire right, title, and interest, worldwide, in any invention or patent thereunder conceived or first actually reduced to practice in performing this Order. Seller grants Buyer a royalty-free, non-exclusive, worldwide, irrevocable license to make, use and sell any invention which is not conceived or first actually reduced to practice in performing this Order, but which is described or incorporated in anything furnished to Buyer in connection with this Order. In connection with actual inventions or patents conceived or first actually reduced to practice in connection with this Order, Seller will furnish Buyer with information sufficient to file and prosecute patent applications, and will execute all documents incident to such filing and prosecution and, in connection with the license granted under this Order, Seller will furnish information sufficient to enable Buyer to avail itself of such license. Final payment shall not be due hereunder until after receipt by Buyer of such complete invention information, or certification that there is no such information, and receipt of all information and data which is the property of Buyer. These obligations shall survive the termination of this Order. Seller further agrees not to knowingly include any material copyrighted by others in technical data delivered under this Order without first obtaining, at no additional cost and for the benefit of Buyer, a license therein of the same scope as set forth herein.
- a. Seller agrees that all Seller owned data, including but not limited to tapes, photo prints and other graphic information, furnished with Item(s) or required to be furnished by this Order, together with any information furnished orally, shall be free from proprietary restriction. Data for which a restrictive use marking is authorized herein or by special agreement, may be duplicated and used by Buyer in performance of its present and future contracts including preparation of logistics and instructional information and delivery thereof as required by customer contract, provided that Seller's data subject to restrictive use marking as authorized herein, so long as the information is not legally available to Buyer from other sources, shall not be disclosed outside Buyer or its customers without Seller's permission. Seller further agrees to furnish additional data required by Buyer to support Buyer's requirements for logistics, maintenance, and operational data for Buyer's customers within three (3) years of final delivery for a reasonable price for preparation and delivery, including generation thereof, if required.
 - b. To the extent that Seller establishes a claim to statutory copyright in any data furnished in the performance of this Order, Seller grants the Buyer a royalty-free, perpetual, nonexclusive, irrevocable, worldwide license to publish, distribute, translate, duplicate, exhibit, or perform any such data copyrighted by the Seller with the right to grant sublicenses.
 - c. Exclusive of computer software and related documentation, Seller agrees to grant a license for the benefit of Buyer of the same scope set forth in Section 12.3 to any technical data delivered under this Order that are copyrighted by Seller.
 - d. Exclusive of computer software and related documentation, Seller further agrees not to knowingly include any material copyrighted by others in technical data delivered under this Order without first obtaining, at no additional cost and for the benefit of Buyer, a license therein of the same scope as set forth in Section 12.3.
- 18. Insurance:** All Suppliers shall have, as a minimum, the insurance coverage described below:
- i. During the term of this Order, Seller shall maintain the following insurance coverage in form and amounts reasonably satisfactory to Buyer:
 - ii. Workers' Compensation as statutorily required in the State where the work is performed;
 - iii. Employers Liability insurance in an amount not less than \$500,000 per accident, per employee, per disease
 - iv. Commercial Automobile Liability insurance and, if necessary, Umbrella Liability insurance in a combined total amount not less than \$1,000,000 per accident covering bodily injury and property damage arising out the loading, unloading and use of owned, hired, and non-owned autos.
 - 1. Commercial General Liability insurance and, if necessary, Umbrella Liability in a combined total amount not less than with a limit not less than \$1,000,000 per occurrence to cover bodily injury and property damage arising out of premises, operations, independent contractors, product-completed operations, personal injury and advertising injury, and liability assumed under an insured contract.
 - b. If the product(s) sold to Buyer under this Order is (are) subject to an airworthiness certification pursuant to any government regulatory agency or in and of itself could be considered an aircraft product, Seller shall also maintain coverage for aircraft products liability in an amount not less than \$25,000,000 per occurrence and in the aggregate covering bodily injury or property damage sustained by any person, caused by an occurrence and arising out of an aircraft products hazard. Such insurance can be provided by an Aircraft Products Liability insurance policy or
 - c. the endorsement of the Commercial General Liability policy described in Section 15.1(d) to include coverage for aircraft products.
 - d. All required insurance must be underwritten by insurance companies with a minimum rating by A.M. Best of "A-" or other rating equivalent and licensed to conduct business in all states or territories where this Order shall apply.
 - e. Seller shall cause its insurer to waive its rights of subrogation against Buyer with respects to Workers' Compensation.
 - f. Seller shall provide Buyer a certificate of insurance attesting to the described above within five (5) business days of signing this agreement and/or prior to the commencement of the Work and ten (10) days of each policy renewal.
 - g. The certificate insurer shall endeavor to provide thirty (30) days written notice to Buyer in the event of policy cancellation or material change.
 - h. Subject to Buyer's permission for Seller to utilize subcontractors, Seller is obligated to assure that each such subcontractor maintains each of the above coverage and extends such indemnity obligation to Buyer. In the event that any such subcontractor or its insurers fail or are unable to honor the indemnification obligations of Seller to
 - i. Buyer as stated in this Order in any manner, Seller agrees to assume such obligations of the subcontractor.
 - j. It is specifically agreed that the types and amounts of insurance requested above shall not limit or otherwise affect
 - k. Seller's obligation to indemnify and hold Buyer harmless as provided by Article 14 and/or 16 of this Order.
 - l. The failure of Seller to maintain the insurance coverage and limits required by the Buyer during the term of this Order shall be considered a material breach hereof. Any failure of Buyer to declare Seller to be in material breach hereof shall not be deemed a waiver by Buyer of the right to claim material breach for subsequent failure to maintain the required coverage.
- 19. Indemnification:** Seller hereby agrees to indemnify and hold harmless Buyer, its affiliates and their respective successors and assigns, and its and their respective directors, officers, agents and employees, from and against any and all claims, liabilities, damages, losses, causes of action and judgments (a) brought by any

person, corporation, governmental entity or other entity not a party to this agreement, whether arising from injury or death to persons or loss or damage to property or otherwise (collectively "Third Party Claims"), and reasonable attorneys' fees and costs and expenses incident thereto to the extent such Third Party Claims arise from (i) any defect in the design, workmanship or material of any Item(s) or associated software delivered by Seller to Buyer hereunder and/or (ii) any negligence (whether active or passive) or willful misconduct of Seller, its subcontractors of any tier or its or their directors, officers, agents, or employees; and (b) arising out of or in connection with any breach by Seller of its warranty stated in Article 8 herein.

- 20. Force Majeure:** Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the Item(s) or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within twenty-four (24) hours after the beginning of any such delay.
- 21. Assignment and Subcontracting:** Buyer may assign in whole or in part any of its rights and obligations under this Order without the prior consent of Seller. Seller shall not assign in whole or in part or subcontract in whole or substantially in whole any part of its rights or obligations under this Order without the express written consent of Buyer. The terms and conditions of this Order shall bind any permitted successors and assigns of either party.
- 22. Confidential or Proprietary Information of the Seller:** Seller shall keep confidential and otherwise protect from disclosure all data or information, regardless of form and including but not limited to drawings, specifications, samples, software (source and object codes and any related documentation) and property obtained from Buyer in connection with this Order and identified as confidential or proprietary. Goods or services designed or manufactured specifically to Buyer requirements or specifications shall not be sold or marketed to any third party without Buyer's prior express written consent. Unless otherwise expressly authorized herein or by Buyer in writing, Seller shall use such information and property, and the features thereof, only in the performance and for the purpose of this Order. Nothing contained herein grants Seller any ownership in or rights to any information furnished except as specifically stated herein or granted separately in writing by Buyer.
- a.** Upon Buyer's request, Seller shall return all such information and property to Buyer or make other disposition thereof as is directed by Buyer. In the event of such requirement, Buyer shall provide and Seller shall comply, with written instruction on how Seller must sell or dispose of defective, completed or partially completed proprietary information, equipment or property, including scrap, or rendering such property unsuitable for further use. In all subcontracts and purchase orders issued by Seller for performance of work related to this Order, Seller shall include appropriate confidentiality terms and conditions to ensure Buyer has the same rights and protection contained in this Article in all subcontracts.
- b.** Seller shall be liable to Buyer for any loss or misappropriation of the information or property.
- 23. Buyer's Property** All property used by Seller in connection with this agreement which is owned, furnished, charged to or paid for by Buyer shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for this agreement and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear expected, and when such property is no longer required hereunder, Seller shall furnish Buyer with a list thereof and shall comply with any Buyer disposition instructions applicable thereto. Buyer shall not be obligated to pay any invoices for tooling until the first Item produced therefrom shall have been received and accepted.
- a.** Materials, excluding U.S. Government Property, furnished by Buyer on other than a charge basis in connection with this agreement shall be held by Seller as bailee thereof. Seller agrees to pay Buyer's replacement cost for all such material spoiled or otherwise not satisfactorily accounted for over and above two percent (2%) thereof allowable for scrap loss. Seller shall be a bailee of the Buyer's property until the termination or expiration of the Order, or Buyer requires Seller to return such property, whichever may occur first. As bailee, Seller is required to provide insurance for the Buyer's property in an amount specified by Buyer, pay any reasonable expenses associated with the storage and maintenance of Buyer's property, and retain possession of the Buyer's property throughout the performance of this Order, unless written permission is obtained from Buyer. Seller covenants and warrants to Buyer that it will not permit or suffer any third party or parties to assert any liens of any nature against the bailed property, by any agreement, use the bailed property as collateral in any secured transaction, or perfect any security interest in the same or otherwise encumber the bailed property. The Seller will also indemnify, defend, and hold harmless Buyer, and all persons and entities of Buyer, from any and all damages and claims for damages arising out of this agreement or in connection with the products manufactured or processed by Seller using the bailed property. Buyer and its agents shall not be liable for any injury, death or property damage arising from the use of the bailed property. Seller will be liable for any loss or damage of the bailed property and provide a replacement value for any lost or damaged bailed property.
- b.** Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives or any gratuity or political contribution to any Government officials or political party with a view toward securing this order or securing favorable treatment with respect thereto.
- 24. Compliance with Laws** Seller warrants that it will comply with all federal, state, and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Order including any employment, health or safety agency regulations.
- 25. Standards of Business Conduct:** As Moldtronics is committed to conducting our business with the highest standards of ethics and in accordance with the laws of the United States and other countries in which we operate. We expect all who conduct business with Moldtronics to operate in this same manner and with the highest standards of integrity. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of business conduct. Seller shall be responsible for providing a copy of Buyer or Seller code of business conduct to any individual Seller employee assigned to work at a Buyer facility. Seller, its employees, agents and representatives shall immediately notify Buyer through its reporting mechanism at sales@moldtronics.com of any instance in which it believes that the Standards of Business Conduct or law may have been violated in the execution of services under this Order.
- 26. Remedies, Non-Waiver, & Invalidity:** Any and all failures, delays, or forbearances of either Party in insisting upon or enforcing at any time or times any of the terms and conditions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment of any such terms and conditions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. The waiver of any breach of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of any: a) subsequent breach of such term, provision, covenant or condition; or b) other term, provision, covenant, or condition. The invalidity in whole or in part of any term and condition contained herein shall not affect the validity of any other term and condition. The rights and remedies provided Buyer pursuant to this Order shall be cumulative and in addition to any other rights and remedies provided by law or equity.
- 27. Applicable Law:** This Order shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, without regard to its choice of law rules, but including the provisions of the Uniform Commercial Code of said State. This Order specifically excludes the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods and the U. N. Convention on the Limitation Period in the International Sale of Goods, as amended by Protocol.
- 28. Disputes:**
As to all Sellers, U.S. based and Foreign based: U.S. based Sellers are those Sellers who have their principal place of business located within the United States. Foreign based Sellers are those Sellers who have their principal place of business located outside the United States. In the event that any claim, dispute or controversy arising out of or in connection with this Order or any Purchase Order including, without limitation, any question regarding the existence, validity, breach or termination of such Order or any Purchase Order, cannot be resolved by the parties themselves through negotiation, All claims, disputes or controversies which are not resolved through negotiation or mediation shall be resolved exclusively in Dupage County, Illinois.
As to Foreign based Sellers: In the event that any such claim, dispute or controversy cannot be resolved by and between Buyer and any Foreign based Seller through negotiation and/or mediation within sixty (60) days after such dispute arises, the place of court shall be Dupage County IL, USA. The language of the litigation shall be English.
- 29. Judgment:** Judgment upon the award rendered by the legal proceedings under either Sections 26.2 or 26.3 above may agree the award will be final, in writing, and binding and cannot be made subject to any review, appeal or other recourse. Both Parties waive and relinquish the right to refer such claim, dispute or controversy to any other jurisdiction. Each party shall bear its costs of legal proceedings except that the court shall award to the prevailing Party its **reasonable** attorney's fees.
- 30. Performance:** Pending final resolution of any dispute, Seller shall proceed with performance of its obligations under this Order any Purchase Order in

- accordance with Buyer's instructions so long as Buyer continues to pay Seller amounts due under this Order or any Purchase Order that are not in dispute.
31. **Confidentiality:** The existence and content of the legal proceedings and any rulings or award shall be kept confidential by the Parties and members of the legal teams except (i) to the extent that disclosure may be required of a Party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority, (ii) with the consent of all Parties, (iii) where needed for the preparation or presentation of a claim or defense in this arbitration, (iv) where such information is already in the public domain other than as a result of a breach of this clause.
32. **Taxes:** All duties and taxes payable in the country of manufacture due under the laws of that country shall be borne by the Seller. Seller is liable for and shall pay all taxes, impositions, charges and exactions imposed on or measured by this Order except those Buyer specifically agrees or is required by law to pay and which are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges and exactions for which Buyer has furnished an exemption certificate.
33. **Title:** Except if title has heretofore passed to Buyer or Buyer's customers under other provisions of this Order, title to the Item(s) shall pass to Buyer upon delivery of the Item(s) to the point designated by Buyer in its Shipping Term.
34. **Hazardous Materials:** Seller shall notify upon signature of this Agreement or transmission of Purchase Order acceptance at latest, Buyer of every Item(s) ordered hereunder which contains a substance or material that may be hazardous to the environment or injurious to the health or physical safety of persons even though said hazard or injury may only occur due to mishandling or misuse of the Item(s). In addition, Seller shall identify the hazardous or injurious substance or material and notify Buyer of the effects of such substance or material on the environment, human beings and the physical manifestations that could result. For each Item(s) so identified, Seller shall provide to Buyer (i) the name of the substance or material, and the percentage by weight thereof in the Item(s) and in any subcomponent thereof, if any, and (ii) warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and its effects. The same shall apply, if Seller's Items contain Substances of Very High Concern ("SVHC") as defined in the Regulation ("EC") No 1907/2006 of the European Parliament and of the Council of December 18, 2006 concerning Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). In addition, Seller shall also promptly notify Buyer whenever an Item contains a substance that is added to the REACH Candidate List. Seller represents and warrants that no Item contains any hazardous substance or material, unless duly notified to Buyer in accordance with this Section. Seller also represents and warrants that the Item(s), its supply, its use, including its incorporation into other products, and its import into the European Union, complies with all applicable REACH requirements, including, but not limited to, registration of substances, and notification and authorization of SVHC. Seller shall operate a program to ensure that it becomes immediately aware if, at any point in time after the execution of this Agreement, any Item contains any hazardous or injurious substance or material, including, but not limited to, substances regulated pursuant to REACH. Seller's program shall, inter alia, require the inclusion in agreements with its suppliers of specific obligations that are no less stringent than those imposed on Seller by this Agreement.
- Seller shall comply with all environmental European and National Laws and, upon Buyer's request, provide Buyer free of charge with all information and documentation that Buyer deems necessary for responding to the demands of all current and future European and National Laws.
 - Seller shall cooperate with Buyer to ensure that all requirements of European and National Laws, including, but not limited to, REACH information and data requirements, are met. Seller shall reimburse Buyer for all costs and expenses in connection with any expenditure required by Buyer for compliance of Items with such European and National Laws including, but not limited to, testing for REACH compliance which testing shall be performed, at Buyer's option, by Buyer or Seller.
 - Seller shall complete Buyer's bi-annual survey in thirty (30) days from receipt of the survey and Seller further agrees that Seller's non-response within thirty (30) days shall constitute Seller's affirmation of compliance with the issues contemplated by this Article 29 and any other issues included in the survey.
 - Prior to the initial shipment of any Item that contains lithium or any other derivative or combination of matter that contains lithium, Seller shall notify Buyer in advance of Item shipment via email at rohs@rockwellcollins.com. If there is any material change to the lithium content in subsequent shipments of any Item, Seller shall resubmit the notification with the updated information. Such notification of lithium content shall be accurate and complete in accordance with the appropriate form available for download at www.supplycollins.com. Additionally, prior to and during shipment, each Item containing lithium shall meet the labeling and all other requirements set forth in UN (United Nations) Manual of Tests and Criteria, part III, subsection 8.3 as referenced in the US (United States) DOT (Department of Transportation) hazardous materials regulation 49 CFR (Code of Federal Regulations) parts 100-
 - Furthermore, prior to and during shipment, each Item that contains lithium shall meet the requirements set forth in the IATA (International Air Transport Authority) Dangerous Goods Regulations Section 4.
35. **U.S. Export Control Laws and Regulations:** The recipient of information and property under this Order acknowledges its obligations to control access to technical data and equipment under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations and any license(s) issued thereunder with regard to any technical data or equipment received under this Order. Seller shall be responsible for obtaining required export licenses or other approvals from the government of the country of origin. Should any government deny a license or approval necessary for the performance of this Order or any Purchase Order for reasons beyond the control of Seller, this Order or any Purchase Order may be canceled in accordance with Article 10 herein. In the event any government agency levies any penalties, fines or charges against Buyer due to Seller's failure to provide any necessary Item(s) information for import or export documentation, Seller shall reimburse Buyer for all such charges.
- Industrial Cooperation Credits:** Buyer's need for industrial cooperation credits may be one of the reasons for entering into this Order or any Purchase Order. In the event this Order is awarded to a non-U.S. company, Buyer (including its business units, divisions, and subsidiaries) shall have the exclusive rights to all offset or industrial cooperation credits flowing from this Order. At Buyer's request, Seller shall provide appropriate transaction information which Buyer may need for claiming offset or industrial cooperation credits.
 - Product Information:** Seller shall provide the following information as applicable for all Item(s) to be delivered under this Order. Inability to provide the required information may be considered a failure to deliver in conformity with this Order and Buyer may, in its sole discretion and at Seller's expense, reject the article at the point of receipt:
 - Harmonized Tariff Schedule Number (HTS) (Applicable for Seller designed products); Export Control Classification Number (ECCN) or USML Category Code (CAT) (Applicable for Seller designed Item(s)); Country of Origin; A Certificate of Origin or Manufacturer's Affidavit (MA) for all Item(s) delivered hereunder. If the Item is manufactured in Canada or Mexico, a NAFTA Certificate of Origin is required. Seller must submit a Certificate for each Item by either: submitting a blanket Certificate of Origin or MA on an annual basis for all Item(s) to be delivered; or submitting an individual Certificate whenever there is a change in country of origin on any Item(s) on this Order; or submitting a new Certificate or MA for any new Buyer or Seller Part Number that is added to this Order.
 - The Certificates of Origin or MA shall be sent to Buyer's purchasing representative.
36. **Import Documentation:** A commercial invoice must be presented for each import into the United States (19 CFR 141.81). If the required commercial invoice is not available, a pro forma invoice may be used in place of a commercial invoice (19 CFR 141.85). The commercial invoice must be prepared in the manner customary in the trade, contain the information required by 19 CFR 141.86 through 141.89, and substantiate the statistical information required by 19 CFR 141.61 (e) to be given on the entry. The Code of Federal Regulations may be found at <http://www.gpoaccess.gov/cfr/retrieve.html>.
37. **Customs:** Trade Partnership Against Terrorism (C-TPAT): Seller must meet the minimum security requirements under C-TPAT. Seller shall provide their C-TPAT SVI number or certification that they comply with the security requirements. Requirements may be found at: http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpatt/.
- In the event Supplier is supplying an Item(s) that is controlled under the International Traffic in Arms Regulations and classified on the United States Munitions List (USML), Supplier shall provide confirmation in writing to Moldtronics that Supplier is registered with the Directorate of Defense Trade Controls (ITAR 22 C.F.R.
 - Inability to provide the required information may be considered a failure to deliver in conformity with this
 - Order and Buyer may, in its sole discretion and at Seller's expense, reject the Item(s) at the point of receipt
38. **United States Public Laws:** Seller shall comply with the requirements, as applicable and as amended, of 41 C.F.R. §60-1 Equal Employment Opportunity; 41 C.F.R. §60-250-1 Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans of Vietnam; and 29 U.S.C. §793

Employment Under Federal Contracts; 15 C.F.R. 700 Defense Priorities Allocation System, 15 U.S.C. 637(d)(2). Subcontracts for Commercial Items referenced in Federal Acquisition Regulation (FAR) 52.244-6; Contractor Code of Business Ethics and Conduct referenced in FAR 52.203-13; and Employment Eligibility Verification referenced in FAR 52.222-54. Seller further warrants that it and its suppliers and/or subcontractors shall certify compliance with the requirements, as applicable and as amended, of the California Civil Code Section 1714.43 (California Transparency in Supply Chains Act) and allow Buyer to perform any activities required for verification thereof.

39. **SPECIAL U.S. GOVERNMENT PROVISIONS APPLICABLE TO ALL ORDERS:** All Orders shall comply with Defense Federal Acquisition Regulations (DFAR) 252.244-7000 and 252.225-7009.
40. **SPECIAL U.S. GOVERNMENT PROVISIONS:** If an Order identifies that it is placed under a U.S. Government firm fixed price prime contract for non-commercial Items, applicable special U.S. Government clauses are found in Attachment "A" and incorporated herein by reference to this Form 99FP.
41. **SELLER BUSINESS CLASSIFICATION** – If Seller is a U.S.-based seller and considered to be an Alaska Native Corporation or Indian Tribe as defined in FAR 52.219-9(b), Seller agrees that Buyer shall receive small business credit for the amount of dollars spent with Seller pursuant to FAR 52.219-9(d)(i-ii). Seller shall comply, as applicable and amended, with FAR 52.219-8 and shall not designate small business credit to another contractor for any amount spent by Buyer.
42. **Severability:** If any term or condition of this Order is held invalid or unenforceable for any reason, the remaining provisions of this Order shall continue in full force and effect as if this Order had been executed with the invalid portion eliminated, provided the effectiveness of the remaining portions of this Order will not defeat the overall intent of the parties. In such a situation, the parties agree, to the extent legal and possible, to incorporate a replacement provision to accomplish the originally intended effect.
43. **Survivability:** It is hereby agreed that the Articles of this Order, 8 "WARRANTY"; 14 "PATENT INDEMNITY"; 19 "CONFIDENTIAL OR PROPRIETARY INFORMATION AND PROPERTY"; 15 "INSURANCE"; 16 "INDEMNIFICATION"; 24 "REMEDIES, NON-WAIVER AND INVALIDITY"; 26 "DISPUTES"; 35 "SEVERABILITY"; 36 "SURVIVABILITY"; and 39 "ENTIRE AGREEMENT", and all remedies at law and equity including those expressly stated herein, shall survive the expiration or any termination of this Order, and that any termination of this Order shall not relieve either Party from its obligations which had arisen prior to the termination.
44. **Examination of Records:** Seller shall maintain complete and accurate records showing the sales volume of all Items.
- a. Such records shall support all services performed, allowances claimed and costs incurred by Seller in the performance of this Order, including but not limited to those factors which comprise or affect direct labor hours, direct labor rates, material costs, burden rates and subcontracts. Such records and other data shall be capable of verification through audit and analysis by Buyer and be available to Buyer at Seller's facility for Buyer's examination, reproduction, and audit at all reasonable times from the date of this Order until three (3) years after final payment hereunder. Seller shall provide assistance to interpret such data if request by Buyer. Such examination shall provide Buyer with complete information regarding Seller's performance for use in price negotiations with Seller relating to existing or further Order(s) for Items, including but not limited to negotiation of equitable adjustments for changes and termination/obsolescence claims pursuant to Article 10 hereof. Buyer shall treat all information disclosed under this Article 36 as confidential, unless disclosure hereof is required to enforce the terms of this Order, or is required by law, regulation or formal legal process.
45. **NOTICES:** Except as may be required for detailed instructions concerning administration of individual purchase orders issued hereunder, any notices or reports required by this Order or with respect to the Order shall be considered as having been given or made if mailed by certified or registered mail to:
46. **THE SELLER will ensure there is a program in place for counterfeit parts prevention.**
47. **THE SELLER will ensure their employees who work on Moldtronics Parts:**
- Are aware of their contribution to product and service conformity;
 - Are aware of their contribution to product safety and ethical behavior.
48. **In the case of Buyer:**
Moldtronics, Inc.
Attn:
703 Rogers St
Downers Grove, IL 60515
49. **In the case of Seller:**
Seller
Attn:
50. **ENTIRE AGREEMENT:** This Order is intended by the Buyer and Seller as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings, written or oral, between the Parties, no usage of the trade nor acceptance or acquiescence in a course of performance rendered under this Order shall be relevant to supplement, explain or be relevant to determine the meaning of the terms of this Order even though the accepting or acquiescing Party has knowledge of the nature of the performance and opportunity for objection. No Amendment or change of any kind shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer.

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