

Standard Terms & Conditions For Customers

1. HEADINGS NOT CONTROLLING

The headings of these Terms and Conditions of Sale are solely for organization and reference and shall not affect their interpretation. Where the contract requires, items stated in the plural herein shall be deemed to mean the singular and vice versa.

2. APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT

Unless otherwise provided, the sale by Curtiss-Wright Controls Electronic Systems (“Seller”) of any products or services described herein (“Order”), shall be governed solely by these Terms and Conditions of Sale and such other provisions agreed upon in writing by duly authorized representatives of Seller. Any oral understandings are expressly excluded. Seller shall not be deemed to have waived these Terms and Conditions of Sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer’s Purchase Order Form, which provisions are hereby expressly rejected. Buyer’s silence or acceptance or use of products constitutes its acceptance of these Terms and Conditions of Sale. No modification or addition to these Terms and Conditions of Sale shall be effective unless agreed to in writing and signed by an authorized representative of Buyer and Seller. These Terms and Conditions of Sale shall apply to any Order for products or services whether or not they are referenced in such Order. Seller reserves the right to reject any Order submitted for its acceptance.

3. CANCELLATION/TERMINATION

Buyer has no right to cancel this order, in whole or in part, absent the prior written agreement of Seller. Custom products and end-of-life last time buys are non-cancelable. Cancellation of orders for standard products is permitted only if written notice of cancellation is delivered to Seller at least thirty (30) days before the initially scheduled delivery date. Cancelable orders may be canceled by Buyer only upon payment of reasonable cancellation charges, which shall include but not be limited to expenses already incurred for labor and material costs, overhead, commitments made by Seller, and a reasonable profit. In the event of cancellation, Buyer will have no rights in partially completed goods. Buyer may be entitled to reschedule a shipment not more than once, and only if Buyer gives at least forty-five days written notice of such reschedule and the rescheduled shipment date is no later than ninety days after the originally scheduled delivery date.

4. PRICES AND PAYMENTS

After formal credit approval, payment terms are net thirty (30) days from the date of invoice, unless otherwise specified in the Customer Quotation. Otherwise, terms are

cash in advance. Buyer shall pay interest on amounts not paid when due, at the rate of 1 1/2% per month. Remittances must be made to the address on the invoice. Transportation and installation costs are the sole responsibility of Buyer.

5. CONFLICTING PROVISIONS

In the event of any conflict between these Terms and Conditions of Sale, and the provisions contained in any purchase order, confirmation, or other similar document issued to Seller by Buyer, the provisions of these Terms and Conditions shall prevail. If any provision, provisions or any portions of any provisions, of these Terms and Conditions shall be held to be invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

6. ASSIGNMENT

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

7. WAIVER

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

8. INSPECTION AND ACCEPTANCE

Buyer shall inspect and accept or reject products delivered pursuant to these Terms and Conditions and the Purchase Order promptly after Buyer takes custody of such products. In the event the products do not comply with the applicable specifications, Buyer shall notify Seller of such noncompliance and Seller shall have a reasonable opportunity to correct any such noncompliance. Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such noncompliance in the event Seller does not receive such notification from Buyer within fifteen (15) days after Buyer takes custody thereof.

9. WARRANTY

Seller warrants that the products and services delivered to Buyer shall be free from defects in material and workmanship, provided that the unit has not been subjected to accident, abuse, or misuse, and that the unit has been operated in accordance with the Seller's recommendations. Such warranty shall be effective for twelve (12) months after Seller's delivery unless a different term has otherwise been agreed to in writing by Seller. If a product is determined to be in breach of this warranty, Seller liability

shall be to repair or replace such product or grant a credit for the purchase price (at Seller's sole discretion and option), which shall be Buyer's sole remedy for such breach of warranty. Software is warranted, if at all, only to the extent provided in the applicable software license, and Seller makes no warranty or representation that the operation of software will be uninterrupted, error free, or that it will meet Buyer's specific requirements. Seller disclaims all liability with respect to customer data, including software, stored in returned products. The warranty does not cover malfunctions, failures or defects resulting from abuse, misuse, accident, alteration, neglect, improper maintenance, or unauthorized or improper repair or installation. EXCEPT AS PROVIDED HEREIN Seller MAKES NO WARRANTIES OF ANY KIND, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND BUYER WAIVES ALL OTHER WARRANTIES, OBLIGATION OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF Seller.

10. CHANGES

a) Product Changes: Unless otherwise agreed to in writing by Seller, Seller at all times shall have the right, and is entitled in its sole discretion, to make substitutions, changes, additions or improvements to the products being delivered under a Purchase Order without liability or obligation to incorporate such changes, additions or improvements in any item manufactured, sold or delivered prior to incorporation of the change, addition or improvement. Such right is only provided that they will not adversely affect form, fit or function of the product.

b) PO Changes, Buyer may at any time, by written order without notice to any surety, make changes or additions within the general scope of this order in any one or more of the following: technical documents, method of shipment or packaging, time and place of inspection, delivery or acceptance and the amount of Buyer/Government furnished material. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, an equitable adjustment shall be made in the price and delivery schedule, or both, and this order modified accordingly. Any claim by Seller for such adjustment must be made within thirty (30) days of the receipt of such notice. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the "Dispute Resolution" clause 29, of these Terms and Conditions.

11. EXCUSABLE DELAY

Neither party hereto shall be in default or liable for any delay or failure to comply with this Agreement if such delay or failure is due to causes beyond its reasonable

control, provided that such party in writing, promptly, within fifteen (15) calendar days after discovery of the circumstances. If the excusable delay circumstances extend for six months, either party may, at its option, terminate these Terms and Conditions of Sale and the Purchase Order without penalty or liability and without being deemed in default or in breach thereof.

12. QUALITY ASSURANCE

Seller maintains a quality program certified to ISO 9001-2000. Unless otherwise specified, all products are manufactured in accordance with these standard processes, except that third-party products supplied by Seller are manufactured under the third-party's quality system.

13. RETURNS FOR REPAIR OR CREDIT

When Buyer desires to return Products for repair, Buyer should notify Seller in writing and, after receipt of a Return Material Authorization (RMA) number, Buyer may return the Product to Seller's Plant, transportation charges prepaid, for prompt attention. Buyer shall provide all possible information regarding the trouble experienced and complete details of the installation in which the Product was used. An evaluation fee will be charged for non-warranty repairs. Seller's repair procedures shall govern the repair process. Returns for credit will not be accepted unless Seller's written permission has been obtained in each case, in advance. The value of any credit to be issued to Buyer for returned product shall be at Seller's sole discretion.

14. TITLE RETENTION AND SECURITY INTEREST

Seller hereby reserves a security interest in equipment sold and the proceeds thereof, in the amount of its sales price. Default by the Buyer under this contract to Seller will result in Seller's right to repossess the products sold hereunder and without liability to Buyer. These security interests will be satisfied by payment in full. On request of Seller, Buyer will promptly execute financing statements and other instruments which Seller may request to perfect its security interest.

15. INSURANCE

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

16. DESIGN AUTHORITY AND SPECIAL TOOLING

The Products are subject to the protection of the laws of the United States and other countries, and related treaties there between, pertaining to patents, copyrights, trade

secrets, confidential information, know-how and other forms of intellectual and industrial property. Buyer is notified that portions of all material, software, data, processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, mold, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, supplied by Seller are proprietary to Seller. Seller shall retain for itself all proprietary rights in and to all designs, engineering details, intellectual property, and other data pertaining to any product sold except where rights are assigned under written agreement signed by a corporate officer of Seller. Unless such prior written agreement is provided by Seller, in no event shall Buyer permit such data, drawings or information to be: (1) disclosed to any third party other than Buyer's customer; (2) used by the Buyer or Buyer's customer for manufacture of like or similar goods; (3) used for purposes of duplicating or reverse-engineering, Seller's proprietary designs or processes; or (4) used by a party other than the Buyer or Buyer's customer for any purpose.

17. TIME OF DELIVERY AND TITLE

The date of delivery of any item shall be when the item is delivered to the carrier by the Seller except that this date shall not be used for calculating any early delivery penalty. The title for any item shall pass to the Buyer upon Seller's delivery of the item to the carrier.

18. LIMITATION OF LIABILITY

The sole exclusive remedies of Buyer are those specifically set forth herein. Seller's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under any Agreement with Buyer, including any warranty set forth herein, whether resulting from breach of contract, breach of warranty, tort, products liability, negligence or otherwise, shall not exceed the aggregate purchase price of the particular goods and services which are the subject of the claim. UNDER NO CIRCUMSTANCES SHALL Seller BE LIABLE TO BUYER FOR LOSS OF BUSINESS, LOST PROFITS, OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF Seller HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. INTELLECTUAL PROPERTY INDEMNITY

Except insofar as a Purchase Order calls for products pursuant to Buyer's designs, drawings or specifications, Seller agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any commercial products manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any United States, Canadian or European patent which has issued at date of contract, and Buyer's reasonable costs and expenses in defense of such suit if Seller does not undertake the defense thereof, provided Seller is promptly notified of the threat or commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof.

Seller's indemnity shall not apply where infringement would not have occurred from the normal use for which the products were designed. No responsibility is assumed for actual or alleged infringement of any foreign patent. Seller's liability for damages hereunder is limited to those computed solely on the value of any products sold to Buyer. In no event shall Seller be liable for consequential damages or costs applicable thereto. In the event of any claim that a product furnished hereunder infringes any United States, Canadian or European patent, Seller may at its option and expense (a) procure for Buyer the right to continue using the product, or (b) replace or modify the product so that it becomes non-infringing, or (c) grant Buyer a credit for such product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Seller. Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Seller based upon a claim of infringement resulting solely from the Buyer combining any product furnished hereunder with any item not manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. In the event any product to be furnished under the Purchase Order is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller's obligation to Buyer as above. Seller shall not be obligated to defend or be liable for costs and damages from a modification of Product after delivery by Seller, or from other fault or action of Buyer. Seller may decline to make further shipments to Buyer hereunder if infringement has occurred for such reasons. THE RIGHTS AND OBLIGATIONS ABOVE ARE IN LIEU OF ANY OTHER INDEMNITY OR WARRANTY, EXPRESS OR IMPLIED BY Seller OR BUYER, WITH RESPECT TO INTELLECTUAL PROPERTY (PATENTS, TRADE SECRET, MASK WORKS, TRADEMARKS, COPYRIGHTS, OR THE LIKE).

20. EXPORT CONTROL

The products or information covered by this agreement may be subject to the export regulations of the Government of the United States, Canada or the Buyer. Buyer will not export, re-export, resell, transfer or disclose, directly or indirectly, any product, technical data or software obtained hereunder outside the same country without (i) complying with applicable export control laws, (ii) notifying and obtaining written permission of Seller, and (iii) providing such reasonable assurances as Seller may request. Seller shall not be liable to Buyer for any failure to provide goods, services or technical data as a result of one these country's: (1) refusal to grant export or re-export license; (2) cancellation of export or re-export license; or (3) interpretation of their export laws and regulations, after the date of the Purchase Order, adversely to the interests of Seller or having a material effect on the cost of Seller's performance.

21. SOFTWARE LICENSE

In the event that a software license is provided with the delivery of Software by Seller to Buyer, wherein a condition of use of the software is acceptance of the agreement ("Shrink Wrap License Agreement") that agreement shall be controlling. In the absence of a Shrink Wrap License Agreement or a separate written software license

agreement between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:

Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, nontransferable license to use the software or software documentation provided herein: (i) in the course of the normal operation in or with Seller products, (ii) in the analysis or the formatting of reports using data from such Seller products or, (iii) on Seller or non-Seller products that are used to test, maintain, download, or process information compiled by Seller products. Making copies of software or documentation except for one copy for archive purposes is prohibited unless specifically authorized by Seller in writing. Should such copying be authorized, Buyer will reproduce and include all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends, both in and on every copy of licensed software and documentation and in any form.

The software license and rights granted by Seller to Buyer hereunder are personal to Buyer. The licensed software and documentation may not be sub-licensed, transferred, or loaned to any other party without Seller's prior express written consent, except that Buyer may transfer the licensed software and documentation in conjunction with the resale of any equipment or Seller supplied test equipment in which the licensed software and documentation is installed or with which it is used. Such permission to transfer is contingent upon the transfer of Buyer's agreement to use and protect the confidentiality of the licensed software and documentation under the same or similar terms as those set forth in this software license. Buyer will, however, notify Seller in writing of the transfer of the licensed software and documentation.

Buyer agrees to utilize all licensed software and documentation only as authorized herein. Buyer may not either itself or with the assistance of others, make modifications to the licensed software and documentation, including, but not limited to, translating, decompiling, disassembling or reverse assembling, reverse engineering, creating derivative or merged works, or performing any other operation on licensed software and documentation to recover any other operation on licensed software and documentation to recover any portion of the program listing, object code or source code or any information contained therein.

Buyer agrees to accept and retain licensed software and documentation in confidence. Buyer agrees to take appropriate action by instruction, agreement or otherwise with Buyer's employees, or agents or other persons who are permitted access to licensed software and documentation to inform said employees, agents or other persons who may come into contact with it of the confidential nature of licensed software and documentation; and to satisfy its obligations under this software license with respect to use, copying, and protection and security of licensed software and documentation.

This software license is effective as of the date of first delivery hereunder and shall continue until terminated by Buyer for any reason whatsoever upon thirty (30) days prior written notice to Seller, provided Buyer ceases using and either returns or destroys Seller software and documentation; or by Seller, if Buyer does not comply with any of the terms and conditions of this software license and Buyer fails to remedy such failure within thirty (30) days after having received notice from Seller of such failure.

Buyer agrees that it will not use the license software and documentation in the performance of a contract, or subcontract, with any Government in a manner so as to affect Seller rights to licensed software and documentation. If Buyer desires to use the licensed software or documentation in the performance of a contract or subcontract with a Government, prior to such use, Buyer shall consult with Seller as to the procedures and use of restrictive markings required to protect the ownership interest of Seller.

This license and sale is subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of the United States and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.

22. TAXES

The prices quoted herein do not include sums necessary to cover any taxes or duties including but not limited to Federal, State, Municipal excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of goods or furnishing of services hereunder. Any taxes or duties that are due and owing hereunder shall be paid by the Buyer. This clause shall survive the acceptance and complete performance of the Purchase Order by the parties herein.

23. UNITED STATES GOVERNMENT CONTRACT

If this purchase is identified as made for use under a United States Government contract, only those applicable terms and conditions which are required to be included by the Federal Acquisition Regulation and the Department of Defense Supplement (FAR/DFAR), or by Executive Order of the United States Government and such other clauses as may be agreed to between the parties shall be incorporated herein by reference.

24. SEVERABILITY

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

25. INSOLVENCY/BANKRUPTCY/FINANCIAL DEFAULT

If the Buyer fails to pay any sum due to Seller hereunder, or shall fail to satisfy any of its obligations hereunder and such default shall continue for ten (10) days after the sending by Seller to the Buyer by a registered letter advising of such default, or if the Buyer by the subject of any proceedings under bankruptcy laws or other insolvency laws or be declared subject to judicial supervision or enter into liquidation, Seller shall have the right to immediately repossess the equipment and to terminate this Agreement. Upon any such termination, the Buyer shall remain liable for all unpaid charges and sums due to Seller and will pay to Seller for all damage and will reimburse all costs including reasonable attorney's fees and costs, suffered or incurred by Seller as a result of the breach by the Buyer of its obligations under this

Agreement. The remedies provided herein shall be in addition to all other means and remedies available to Seller.

26. SETOFF

All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of such Order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or unites under other transactions with Seller, its parents, affiliates, subsidiaries or other divisions or units.

27. INDEMNITY

Buyer will indemnify, hold harmless and defend Seller from and against any claims, suits, judgments, expenses or liabilities of any nature (including without limitation all reasonable attorneys' fees) which are threatened or brought against, or are incurred by, Seller arising from any actions, omissions or misrepresentations of Buyer in the use, promotion, or sale of products or services provided by Seller under this sale.

28. DISPUTE RESOLUTION (FOR CONTRACTS WITH NON-U.S. ENTITIES)

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

29. DISPUTE RESOLUTION (FOR CONTRACTS WITH U.S. ENTITIES)

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

30. APPLICABLE LAW

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

31. COST OF COLLECTION AND ATTORNEYS FEES

In the event any action is taken by Seller to collect amounts billed to Buyer by Seller, Buyer shall be liable for all costs and expenses incurred by Seller in relation thereto, including legal fees.

33. DOCUMENTATION AND MANUALS

All documentation, installation, maintenance, and operations manuals will be in English and in Seller format. Seller retains all rights in and to the documentation and manuals. Copying or translating the documentation or manuals, in whole or in part, into another written or electronic format or language is prohibited unless specifically authorized by Seller in writing. Should such copying be authorized, Buyer will reproduce and include all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends. Any translation requirements are Buyer's responsibility.

34. DISCONTINUED OR OBSOLETE COMPONENTS

Seller performs sustaining engineering for the benefit of all Buyers. This includes non-contract-specific activities to support improved design and manufacturing, and to replace discontinued and obsolete components. Seller monitors the general marketplace, tries to capture relevant design and availability issues, and then recommends actions to the Buyer. In the event that any component part to complete the future manufacture or future delivery of any item addressed herein, excluding commercial items, becomes obsolete or discontinued, Seller shall notify the Buyer

and make recommendations on corrective action. Buyer shall determine the proper course of action, fund the necessary changes, and adjust contractual documents and delivery schedules, as appropriate.

35. LIFE SUPPORT AND NUCLEAR APPLICATIONS

Seller's products are not authorized for and should not be used as critical components in life support systems or nuclear facility applications without the specific written consent of Seller. As used herein:

a) Life support devices or systems are those which support or sustain life, whose failure to perform, when properly used in accordance with instructions provided, can be reasonably expected to result in personal injury or death.

b) Examples of nuclear facility applications are those (1) in a nuclear reactor, or 2) any device designed or used in connection with the handling, processing packaging, preparation, utilization, fabrication, alloying storing, or disposal of fissionable material or waste products thereof.

Buyer's use of Seller's products for life support or nuclear facility applications is at Buyer's own risk. Buyer agrees to defend, indemnify, and hold Seller harmless from any and all claims, suits, or expense resulting from such use.

36. PROGRESS PAYMENTS (for Orders over \$200,000)

The Buyer shall make monthly progress payments to Seller when requested as work progresses. Invoices shall include all applicable detail of the costs incurred.

The Buyer will compute each progress payment as 80 percent of Seller's total unbilled costs incurred under this contract. The amount of payment to Seller for supplies and services purchased directly for this contract are limited to the amounts that Seller has paid, or that are determined due and payable to subcontractors. Seller shall not include in total costs for progress payment purposes costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices; and shall not include unbilled costs incurred by subcontractors or suppliers. Buyer may reduce or suspend progress payments after finding:

(1) Seller failed to comply with any material requirement of this contract.

(2) Performance of this contract is endangered by Seller's failure to make progress

Title to the property described in invoices shall vest in the Buyer. Vestiture shall occur when the applicable progress payment is made.

Seller shall properly and accurately liquidate all progress payments.

As an alternative to progress payments, milestone payments may be negotiated.