THOMAS GLOBAL SYSTEMS AUSTRALIA PTY LTD

GENERAL TERMS AND CONDITIONS OF PURCHASE

1 Definitions

Aviation Product means any part or material that is, or is intended by its manufacturer to be, a part of or used in an aircraft.

Buyer means the Thomas Global Systems entity identified on the face of the Order.

Confidential Information includes, but is not limited to, information related to trade secrets, programs, business plans, inventions (whether patentable, patented or not), processes, formulas, existing or contemplated products, technical data, services, technology, concepts, computer programs, plans, studies, techniques, designs, specifications, patterns, contracts, presentations, and business information, and including information related to any research, development, manufacture, purchasing, engineering, know-how, sales or marketing methods, competitive analyses, methods of doing business, customer lists, or customer usages or requirements.

Incoterms means the set of international rules for the interpretation of terms used in foreign trade contracts as prepared and published by the International Chamber of Commerce. When a term covered by such Incoterms is specified in the Order, such term shall be governed by the *Incoterms 2010*. In case of a conflict between the provisions of the Incoterms and the provisions of the Order, the provisions of the Order shall prevail.

Order means the instrument of contracting, including these terms and conditions and all other referenced documents, and any subsequent changes or modifications.

Party and **Parties** means Buyer and Seller individually or collectively.

Personnel means employees, agents, consultants or contractors of Seller or Buyer or Buyer's customer, as applicable.

Proprietary Information means information that is not generally known in the industry in which a Party is engaged, in the possession, ownership or control of the Party or its employees, or contractors as well as all data or other information exchanged under this Order in written or other permanent form that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the data and information as proprietary to the Party disclosing the information, and includes any information marked with a restrictive legend as prescribed in the United States Defence Federal Acquisition Regulation Supplement (**DFARS**) 252.227-7013 or 252.227-7014 or in the United States Federal Acquisition Regulation (**FAR**) 52.227-14. Proprietary Information also includes information originally disclosed in some other form (e.g., orally or visually) to the extent that the disclosing Party:

(a) identifies the information as proprietary at the time of original disclosure;
(b) summarises the Proprietary Information in writing;
(c) marks the written document clearly and conspicuously with an appropriate proprietary legend; and
(d) delivers the written document to the receiving Party within thirty (30) days of the original disclosure.

Premises means the address specified on the face of the Order.

Prime Contract means the contracting instrument issued to Buyer or Buyer's higher tier customer, for the acquisition of Products and/or Services.

Product(s) means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any Services described in this Order, including Aviation Products.

Representative means the person authorised by Buyer to administer and/or execute this Order and who has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements of this Order.

Seller means the Party named on the face of the Order with whom Buyer is contracting.

Services means Seller's, or its subcontractor's, time and effort required to perform tasks or other labour requirements of the Order, including any Products incidental to the performance of the Service.

Technical Data means all designs, dimensions, specifications, drawings, patterns, know-how, or other information concerning the methods, manufacturing processes, equipment, gauges, and tools used in the design, manufacture, assembly, operation, repair, testing, maintenance, or modification of Products. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation, or used in the performance of Services. Technical Data may be recorded in a written or printed document, computer or electronic file, electro-magnetic tape or disc, software, or any other tangible form of expression.

2 Acceptance

This Order is Buyer's offer to Seller to purchase the Products and/or Services described in the Order. Any additional terms proposed in Seller's acceptance of Buyer's offer including, but not limited to, shrink-wrapped or click-through terms not specifically negotiated and identified on the Order, which add to, vary from, or conflict with the terms of this Order are hereby objected to by Buyer. Any such proposed terms are void and the terms in this Order will constitute the complete and exclusive agreement between the Parties and may be modified only by agreement of both Parties in accordance with the terms of this Order. Any of the following shall constitute Seller's unqualified acceptance of this Order and these terms and conditions:

(a) acknowledgment of this Order;
(b) furnishing of any part of the Products and/or Services under this Order;
(c) acceptance of any payment for the Products/Services under this Order; or
(d) commencement of performance under this Order.

3 Order of precedence

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

(a) Change Order document
(b) Order document
(c) These Order Terms and Conditions
(d) Statement of Work
(e) Specifications/Drawings
(f) Other Referenced Documents

4 Assignment

Neither this Order, nor any payments, rights, obligations, duties nor claims hereunder, are assignable or transferable by subcontract or otherwise without Buyer's prior written consent. Assignment by Seller shall not relieve Seller of any of its obligations under this Order, or prejudice any of Buyer's rights against Seller, whether arising before or after the date of any assignment.

5 Subcontracting

(a) Subcontracting or delegation by Seller, with or without Buyer's consent, shall not relieve Seller of any of its obligations under this Order or prejudice any of Buyer's rights against Seller, whether arising before or after the date of any subcontracting or delegation.

(b) This provision shall not apply to purchases of standard commercial articles, including electronic components or raw materials such as casting, forgings, and rough welded structures on which Seller will perform further work.

6 Warranty

(a) Seller warrants, at the time of delivery to Buyer, that all Products covered by this Order:
- (i) will be new and in their original packaging (unless otherwise specified in this Order);
- (ii) will conform to the design, specifications, drawings, samples and other descriptions referred to in this Order;
- (iii) will be free from defects in workmanship and materials;
- (iv) to the extent that Seller knows or has reason to know of the purpose for which the Products are intended, will be fit and sufficient for such purpose; and
- (v) no claim of infringement of moral rights will be brought against the Buyer by the Seller or the Seller's Personnel. All warranties contained in this clause shall run to Buyer and its customers. Seller shall, at no expense to Buyer or its customers, correct any failure to fulfil these warranties.

(b) Seller warrants that all Services covered by this Order will be delivered by appropriately trained and qualified Personnel to a high standard of professional care and skill, would reasonably be expected from a provider of similar Services.

(c) Seller warrants that the Products are genuine Products and agrees to assign to the Buyer the benefit of any warranty or guarantee given by the manufacturer in respect of all Products, including any related software.

(d) Seller warrants that the Products and/or Services provided under this Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with the "Intellectual Property Rights" and "Protection of Information" clauses of this Order.

(e) Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews, first article approval process, or similar reviews shall not relieve Seller of any obligation under any warranty.

(f) Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its successors and customers.

7 Changes

(a) Buyer's Representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in:
- (i) drawings, designs, statements of work, specifications, planning and /or other technical documents;
- (ii) method of shipment, packaging, or packing;
- (iii) time and place of inspection, delivery or acceptance;
- (iv) reasonable adjustments in quantities and/or delivery schedules;
- (v) place of performance of the Service;
- (vi) the amount of Buyer/customer's Property; and
- (vii) these terms and conditions for the sole purpose of complying with Buyer's obligations to its customer under a Prime Contract, including, but not limited to, any mandatory flow-down clauses.

(b) If any authorised change causes an increase or decrease in the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in the price and/or schedule to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.
- (i) Any claim for adjustment shall be unconditionally waived unless:
  - (A) asserted in writing and delivered to Buyer within fifteen (15) days of the date of the written change order; and
  - (B) a fully supported proposal is delivered to Buyer's Representative within thirty (30) days of the date of the written change order.
- (ii) If, in Buyer's reasonable opinion, the adjustment claimed by Seller is obsolete or excessive, Buyer shall have the right to prescribe the manner of disposition of the Product to include the right to acquire that Product for the adjusted cost claimed.
- (iii) Buyer, its authorised representatives, and its customer have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim. However, at Seller's request, in lieu of Buyer, a mutually agreeable third party can examine books and records to verify Seller's claim.
- (iv) Failure to agree to any adjustment shall be a dispute within the meaning of clause 11. No such Dispute shall relieve Seller of its obligations under this Order as changed.

(c) Buyer's engineering and technical Personnel and other representatives may from time to time render assistance or give technical advice or discuss issues or engage in an exchange of information with Seller's Personnel concerning the Products or Services hereunder. No such action shall be deemed to be a change, nor shall it be the basis for an equitable adjustment, and no such action shall relieve Seller of its obligations under this Order.

8 Governing law

Both Parties agree that, irrespective of the place of performance of this Order, this Order and any dispute arising under or in connection with it shall be governed, construed, and interpreted in accordance with the substantive laws of New South Wales, Australia. The 1980 *United Nations Convention on Contracts for the International Sale of Goods* and its related instruments will not apply to this Order.

9 Termination for convenience

(a) This Order may be terminated at any time by Buyer giving written notice to Seller. Seller shall immediately stop work as specified in the termination notice and shall instruct its subcontractors to stop work (as required). Seller shall, as directed by Buyer, transfer title and deliver to Buyer any completed or partially completed Products, plans, drawings, information and other materials produced or acquired under the terminated Order. Seller shall submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Seller. The amount to which Seller shall be entitled upon termination of this Order shall be determined as follows:
- (i) any payments then due and payable to Seller from Buyer for work performed and accepted by Buyer prior to the effective date of termination;
- (ii) an allowance for any reasonable cancellation charges due to material commitments made by Seller with Seller's suppliers or subcontractors; and
- (iii) any other amounts that are mutually acceptable to Buyer and Seller as being fair and reasonable.

(b) In the event payment has been made by Buyer in excess of the amount determined as being the entitlement of Seller under the provisions of this article, Seller shall repay such excess costs immediately. Buyer may deduct as a set off, any excess amounts from other open subcontracts or Orders with Seller, if any.

(c) In the event payments made by Buyer are less than the amount determined as being the entitlement of Seller under the provisions of this clause, Buyer shall pay to Seller such difference between the amount so paid and the total

amount determined to be due to Seller in accordance with this clause within thirty (30) days of Buyer's receipt of Seller's invoice for said amount.

(d) Notwithstanding the foregoing, the Parties may mutually agree to a partial termination of the Order provided such agreement:
  (i) equitably revises the price for work remaining to be performed and/or delivery of supplies by Seller thereafter;
  (ii) equitably revises all such other rights requirements, risks, obligations and/or responsibilities as may be affected by such partial termination; and
  (iii) is evidenced by a formal variation to this Order signed by both Parties.

(e) In no event shall Buyer's total liability to Seller exceed the total Order price of the Products or Services to which such termination applies, and as reduced by the amount of payments previously made and the Order price of work not terminated, nor shall Buyer be liable for incidental or consequential liabilities. Further, Seller shall have no claim against Buyer for loss of anticipated profits or consequential damages suffered by reason of such termination. If the Parties are unable to reach agreement on an equitable settlement pursuant to this clause, any such dispute shall be handled in accordance with clause 11.

10 Termination for default

(a) Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:
  (i) fails to deliver Products or to perform the Services within the time specified in this Order or any extension;
  (ii) fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of ten (10) days after receipt of the notice from Buyer specifying Seller's failure to perform;
  (iii) for Aviation Products, fails to comply with its obligations set out in clause 44, paragraphs (b) to (f); or
  (iv) becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.

(b) If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Products or Services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those Products or Services. However, Seller shall continue the work not terminated. In addition, Buyer may rework or repair any Product or re-perform any Service at Seller's cost.

(c) If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Products, and (2) partially completed Products, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has or may have an interest.

(d) Buyer shall pay the Order price for completed Products delivered or Services performed and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property.

(e) Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(f) The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Order.

11 Disputes

All disputes, differences, controversies, claims or questions arising in connection with, arising out of, occurring under, or related to, this Order and any subsequent amendments thereto, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims (a **Dispute**) shall be reduced to writing in a document to be sent to the other Party, requesting amicable negotiation (a **Negotiation Request**). A Negotiation Request may be sent by e-mail. The negotiation process hereunder shall be submitted to mutually compatible levels of management of the respective Parties to try and resolve the Dispute amicably and in good faith, and the executives selected shall use their reasonable best efforts to meet and to find a mutually acceptable resolution to the Dispute. In the event that the Dispute or any part thereof is not satisfactorily settled by negotiation within sixty (60) days (or within such further period of time as the Parties may have agreed in writing), any Party may seek relief in the courts of the jurisdiction applicable to this Order.

12 Buyer property

All supplies, materials, equipment, tools, jigs, dies, gauges, fixtures, moulds, patterns, equipment and other items purchased, either directly or indirectly, by Buyer or its customer and/or furnished or delivered to Seller to perform the Order, or for which Seller has been reimbursed by Buyer (collectively referred to as **Buyer/customer's Property**), shall be and remain the property of Buyer or its customer. Seller shall bear the risk of loss of and damage to Buyer/customer's Property in Seller's possession, custody or control. Buyer/customer's Property shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of this Order; shall be deemed to be property; shall be conspicuously marked "Property of Thomas Global Systems" by Seller; shall not be commingled with the property of Seller or with that of any third person; and shall not be moved from Seller's Premises without Buyer's prior written approval. Upon the request of Buyer, Buyer/customer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, at Buyer's direction and expense. With reasonable prior notice, Buyer and its customer shall have the right to enter onto Seller's premises to inspect Buyer/customer's Property and Seller's records with respect thereto. Seller agrees that it will comply with the obligation hereunder to release Buyer/customer's Property notwithstanding any offsetting claim it might have against Buyer and that Seller shall be liable for any loss or damage to Buyer resulting from Seller's failure to release Buyer/customer's Property when requested.

13 Intellectual property rights

(a) Intellectual Property developed or otherwise acquired by Buyer or Seller prior to or outside the scope of this Order (**Background Intellectual Property**), and any intellectual property rights in that Background Intellectual Property, shall be owned by the Party that developed or otherwise acquired the Background Intellectual Property and associated rights.

(b) Seller agrees to make prompt and complete written disclosure to Buyer of all inventions, data, designs, computer software and information, conceived, made or developed as a result of or in connection with work performed under this Order and all intellectual property rights therein (**Inventions**). Seller agrees to keep necessary records supporting such Inventions and discoveries and will furnish to Buyer, upon request, all such records.

(c) All Inventions resulting from the work performed under this Order shall be the sole property of Buyer. Buyer shall have the full right to use such Inventions in any manner, without any claim on the part of the Seller and without any duty to account to the Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under or in connection with this Order, and to provide reasonable support for the Buyer's prosecution

of such patent application. With respect to copyrightable works developed under or in connection with this Order, Buyer and Seller agree that copyright ownership in such works shall vest with Buyer; otherwise, Seller agrees to assign, and does hereby assign copyright ownership of the works to Buyer. Seller shall not, unless otherwise authorised in writing by Buyer, disclose to anyone other than Buyer any Inventions or other data developed under this Order or any data disclosed to Seller by Buyer, and shall not use such Inventions or data for any purpose other than the performance of this Order. Such Inventions or other data developed under this Order shall be considered Proprietary Information and marked as such by Seller.

(d) Seller shall not include any third party intellectual property in the Products provided hereunder, without the express written consent of Buyer. Seller hereby grants Buyer and Buyer's customer an unlimited, irrevocable, paid-up, perpetual, royalty-free right and license (including the right to sublicense) to make, have made, sell, offer for sale, use, modify, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any Products hereunder, and to use any Background Intellectual Property owned by Seller, or in the possession or control of Seller.

(e) Seller represents and warrants that the provision of the Services and use of the Products by Buyer and Buyer's customer will not infringe the moral rights, as defined in the *Copyright Act 1968* (Cth), of the Seller's Personnel or any subcontractor Personnel.

(f) Seller shall provide sufficient Technical Data to enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by Buyer and Buyer's customer to fully exercise its rights under this clause.

(g) This Order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright or other intellectual property right held by Buyer, unless specifically described in the body of the Order.

14 Intellectual property infringement warranty and indemnity

(a) Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their officers, agents, employees, successors and assigns and subcontractors at any tier (each an **IP Indemnified Party**), against any claims, loss, damage or expense, including expenses of defending or participating in claims, arising from any claim, actual or alleged, that: (1) the manufacture, offer for sale, sale, or delivery of Products or performance of Services under this Order, or (2) the use or disposal by, or for the account of, Buyer and/or Buyer's customer of such Products or Services as permitted under this Order infringes any patent, trade secret, copyright, or other intellectual property rights, including moral rights of a third party.

(b) In the event an IP Indemnified Party desires Seller to provide the indemnification described above, Buyer will inform Seller of the claim, demand, or suit asserted or instituted against the IP Indemnified Party and, may require, at Buyer's sole discretion, Seller to defend the claim, demand or suit and settle or otherwise resolve the matter, with Buyer's participation and prior written permission.

15 Indemnification

(a) Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their officers, agents, employees, successors and assigns and subcontractors at any tier (each an **Indemnified Party**), against any claims, loss, damage or expense, regardless of how arising and even if unforeseeable, including, without limitation, payment of direct, special, incidental and consequential damages, and expenses of defending or participating in claims, including attorney's fees, for:

(i) property loss and/or damage;
(ii) personal injury and/or death;
(iii) the negligence, gross negligence, bad faith, or intentional or wilful misconduct of Seller or its Personnel;
(iv) Seller's use of a third party supplier in connection with the provision of the Products or Services; or
(v) breach of Seller's obligations under clause 34, which may be sustained by any third party and/or by an Indemnified Party, arising out of, or relating to, this Order, except for claims resulting from the sole negligence of Buyer.

(b) In the event an Indemnified Party desires Seller to provide the indemnification described above, Buyer will inform Seller of the claim, demand, or suit asserted or instituted against the Indemnified Party and, may require, at Buyer's sole discretion, Seller to defend the claim, demand or suit and settle or otherwise resolve the matter, with Buyer's participation and prior written permission.

16 Insurance

During the Order period Seller shall, at its sole cost and expense and prior to commencing any activity that is the subject of this Order, procure and maintain with a reputable insurer valid and enforceable:

(a) Worker's compensation insurance covering Seller and its Personnel for any claim made against it for an amount necessary to cover any potential liability under statute or at common law;

(b) Public and product liability insurance covering Seller and its Personnel against any liability to any party arising out of or in connection with this Order for an insured amount of not less than the amount specified on the face of the Order per accident or incident claim;

(c) Property insurance covering Seller and its Personnel for any loss or damage to any property used directly or indirectly in connection with the Products and Services; and

(d) Any other insurances on such terms as a prudent contractor providing similar Products and performing similar Services to that under this Order would procure and maintain.

(e) Seller shall promptly provide certificates of insurance evidencing such coverage where requested by Buyer. Seller shall provide Buyer ten (10) days prior written notice of cancellation or material change of any such coverage, provided however that any such notice does not relieve Seller of the obligation to maintain the required insurance.

17 Excusable delay – force majeure

(a) Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to:

(i) acts of God;
(ii) acts or failure of any government in either its sovereign or contractual capacity;
(iii) fires, floods, epidemics, terrorism, quarantine restrictions, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party or its subcontractors. For the avoidance of doubt, Buyer does not consider labour disputes, strikes or other similar action events beyond Seller's reasonable control. In the event that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above, then the Party whose performance is so affected shall immediately notify the other Party's authorised representative in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and at Buyer's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or this Order may be terminated for convenience.

(b) Neither receipt of such notice by Buyer, nor any provision of these terms and conditions will be deemed to be a waiver by Buyer of any of its rights under any Order, these terms, at law or otherwise.

18 Compliance with laws

(a) *General*. Seller shall comply with all statutes, laws, rules, regulations and guidelines of the jurisdiction applicable to this Order and any country, including any governmental subdivision thereof, where Seller has an office or facility or is otherwise doing business or properly subject to jurisdiction under this Order, including United States and any applicable foreign export, import, and sanctions laws, regulations, orders, including without limitation, the Export Administration Regulations (**EAR**), International Traffic in Arms Regulations (**ITAR**), and regulations and orders administered by the United States Treasury Department's Office of Foreign Assets Control, United States customs laws and regulations and all other applicable laws and regulations pertaining to importations of goods and materials into the jurisdictions relevant to this Order, (collectively, the **Laws**) and any applicable authorisations issued thereunder.

(b) *Authorisations*. Provision of United States export-controlled technology, data, software, services and/or hardware under this Order may be subject to and/or superseded by the terms and conditions of applicable United States Government export authorisations. Seller shall obtain any and all licences, permits or other authorisations required by any applicable Laws for the performance of this Order. Buyer will provide all reasonable assistance for Seller to obtain export or import authorisations.

(c) *Export Jurisdiction / Classification*. For United States export-controlled technology, data, software, services and/or hardware furnished by Seller to Buyer under this Order, Seller shall provide Buyer the applicable Export Control Classification Number (**ECCN**) or ITAR classification, except when Seller is manufacturing to Buyer's design. If Seller is not the Original Equipment Manufacturer (**OEM**), Seller shall obtain the ECCN or ITAR classification information from Seller's source of supply. Seller shall include the ECCN or ITAR classification on its packing slips and shipping documentation and also provide to Buyer on Buyer's request.

(d) *Re-transfers and Consent*. Seller shall not re-transfer any export-controlled articles or information (such as technical data or software) without first complying with all the requirements of the applicable Laws and authorisations. Prior to any proposed re-transfer of any export-controlled articles or information, Seller shall first obtain the written consent of the Buyer. Such consent, if provided, is not a waiver of Seller's obligations under this clause, or under applicable Laws and authorisations, nor consent for Seller to violate any provision of applicable Laws and authorisations.

(e) *Imports*. Seller shall assume all import responsibilities, to include designation as Importer of Record, customs clearance, duty, taxes, and fees for goods and materials entering into the jurisdictions relevant to this Order. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for goods and materials procured through this Order.

(f) *Notification*. Seller shall provide prompt notification to Buyer in the event of changes in circumstances (e.g. ineligibility to contract with a government, debarment, assignment of consent agreement, designation under sanctions laws and regulations, and initiation or existence of a government investigation) that could affect Seller's performance under this Order.

(g) Seller represents, warrants and covenants that:

(i) It has not and will not, directly or indirectly, pay, promise, offer, or authorise the payment of any money or anything of value in connection with this Order to:

(A) an officer, employee, agent or representative of any government, including any department, agency, or instrumentality thereof or any person acting in an official capacity thereof;

(B) a candidate for political office, any political party or any official of a political party; or

(C) any other person or entity while knowing or having reason to know that all or any portion of such payment or thing of value will be offered, given or promised, directly or indirectly, to any person or entity for the purpose of assisting Buyer in obtaining or retaining business, or an improper business advantage. Without limiting the generality of the foregoing, Seller shall not directly or indirectly, pay, promise, offer, or authorise the payment of any facilitating payment intended to expedite or secure performance of a routine governmental action, such as, customs clearance on behalf of Buyer; and

(ii) No gifts, travel expenses, business courtesies, hospitalities or entertainment of any nature have been or will be accepted or made in connection with this Order where the intent of was, or is, to unlawfully influence the recipient of the gift, travel expense, business courtesy, hospitality or entertainment. Seller also represents that any gifts, travel expenses, business courtesies, hospitalities or entertainment offered or provided shall meet the following conditions:

(A) be permitted under the United States *Foreign Corrupt Practices Act*, the United Kingdom *Bribery Act 2010* and any applicable laws and regulations of Australia;

(B) be consistent with applicable social and ethical standards and accepted business practices;

(C) be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and

(D) be of such nature that its disclosure will not cause embarrassment for Buyer.

(h) Breach of any of the provisions of subparagraph (g) of this clause by Seller shall be considered an irreparable material breach of this Order and shall entitle Buyer to terminate this Order immediately without compensation to Seller.

19 Notification of status changes

Where Seller has provided anti-corruption compliance due diligence information to a Buyer representative, Seller shall provide Buyer with prompt notification and details of any changes to its owners, officers, directors or other information contained in such due diligence materials, and agrees to promptly cooperate with Buyer and provide additional information reasonably requested related to such changed information. In the event of a material change to the owners, offices, directors or other information contained in the due diligence material supplied to Buyer, Buyer reserves the right to suspend performance under this Order by providing written notice to Seller in order for Buyer to conduct anti-corruption due diligence upon such changed circumstances.

20 Prohibited activities and contacts

(a) *Activity Prohibitions*. Unless specifically authorised in writing by Buyer, Seller shall not engage in any of the following activities on behalf of the Buyer under this Order: acting as an agent of the Buyer; marketing or sales promotion; lobbying; freight forwarding; consulting services; performing offset (industrial participation) consulting or brokering services; acting as a distributor or reseller; or activity as a joint venture party.

(b) *Contact Prohibitions*. Unless specifically authorised in writing by Buyer, Seller shall not contact, either directly or indirectly, public officials of any country in furtherance of its performance on behalf of Buyer under this Order.

21 Release of information or advertising

Except as required by law, Seller shall not release to anyone outside Seller's organisation any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof without the prior written approval of Buyer. Requests for approval shall be made at least fifteen (15) business days before the proposed date for release and shall identify the specific information to be released, the medium to be used, and the purpose for the release. Additionally, Seller shall not use the name "Thomas Global Systems" or any other Buyer trade name, any Products, parts thereof or replicas of Products, or in

any other way identify Buyer in any advertisement, display, news release, or other disclosure without Buyer's prior written consent.

22 Partial invalidity, no waiver, remedies

(a) If any provision in this Order is or becomes void or unenforceable by force or operation of law, or is deemed invalid, the void, unenforceable or invalid portion shall be severable, and the remaining terms and conditions shall remain in full force and effect.

(b) A Party's failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

(c) Each of the rights and remedies reserved by Buyer in this Order shall be cumulative and additional to any other or further remedies provided in law or equity or in this Order.

(d) Any provision of the Order which expressly or by implication from its nature is intended to survive the termination or expiration of the Order and any rights arising on termination or expiration shall survive.

23 Relationship of the parties

The relationship of Seller to Buyer shall be that of an independent contractor and nothing contained in this Order shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents and/or representatives (**Employees**) performing under this Order shall at all times be under Seller's direction and control and Seller shall so inform them. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees. Under no circumstance shall Seller be deemed an agent or representative of Buyer or authorised to commit Buyer in any way.

24 Anti-trafficking in persons

(a) Buyer prohibits its employees, agents, subcontractors, and contract labour from engaging in activities that support or promote trafficking in persons and Seller represents and warrants that it shall not engage in such activities. Further, Seller shall require its employees, agents, contract labour and subcontractors to abide by and comply with the requirements of this clause.

(b) Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, regardless of how arising and even if unforeseeable, including, without limitation, payment of direct, special, incidental and consequential damages and attorney's fees, arising out of, or relating to, Seller's or Seller's employees, agents, subcontractors or contract labour's failure to comply with the requirements of this clause.

25 Plant security and safety

If this Order requires Seller's Personnel to enter premises under the ownership or control of Buyer or Buyer's customer, Seller agrees to abide by and comply with, and require its employees and subcontractors to comply with all rules and regulations pertaining to security and safety as may be prescribed by Buyer and/or Buyer's customer, including, but not limited to, badging, citizenship requirements and background investigations. Seller must carry out its obligations under this Order in a way that is safe and without risk to the health of its employees and contractors, Buyer and Buyer's customer employees and contractors and any person who may come into contact with the Products. Seller must prepare all necessary documents recording the procedures and policies it will employ to ensure it meets its obligations under this clause and must make all such documents available to Buyer on request. Buyer may suspend or terminate this Order for default if Buyer considers that Seller's policies, procedures or documents are inadequate to meet the obligations of this clause. Seller agrees to defend, indemnify, and hold harmless Buyer and its officers, employees, directors and agents from, and at the Buyer's option defend against, any and all claims, losses, liabilities, costs and expenses, including without limitation third-party claims, reasonable attorneys' fees, consultants' fees and court costs (collectively, **Claims**), to the extent that such Claims arise from, or may be in any way attributable to, the presence of Seller and/or its Personnel on the Buyer's Premises pursuant to this Order, provided that any such Claims are not caused or contributed to by the negligence of the Buyer of its Personnel.

26 Stop work order

(a) Buyer may, at any time, by written notification to Seller, require Seller to stop all, or any part of the work called for by this Order for a period of ninety (90) days after the written notification is delivered to Seller, and for any further period to which the Parties may agree. The notification shall be specifically identified as a Stop Work Order (**SWO**) issued pursuant to this clause. Upon receipt of the SWO, Seller shall immediately comply with its terms and take all reasonable steps to minimise the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of ninety (90) days after a SWO is delivered to Seller, or within any extension of that period to which the Parties shall have agreed, Buyer shall either (1) cancel the SWO, or (2) terminate the work covered by the SWO for convenience as provided by clause 9.

(b) If a SWO issued under this clause is cancelled or the period of the Order or any extension thereof expires, Seller shall resume work. Buyer shall make an equitable adjustment in the delivery schedule or Order price, or both, and this Order shall be modified in writing accordingly if (1) the SWO results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Order, and (2) Seller asserts its rights to the adjustment within twenty (20) days after the end of the period of work stoppage. Failure of the Parties to agree to any adjustment to be made under this clause shall not excuse Seller from proceeding with the performance of the Order.

(c) If a SWO is not cancelled and the work covered by such SWO is terminated for the convenience of Buyer, Buyer shall allow reasonable costs resulting from the SWO in arriving at the termination settlement. If a SWO is not cancelled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the SWO.

27 Suspect/counterfeit materials

Seller represents and warrants that it has policies and procedures in place to ensure that none of the Products furnished under this Order are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief that no such parts have been or are being furnished to Buyer by Seller. **Suspect/counterfeit parts** are parts that may be of new manufacture, but are misleadingly labelled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labelling, that are represented as new parts or any parts that are designated as suspect by the United States Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (**GIDEP**). If Buyer reasonably determines Seller has supplied suspect/counterfeit parts to Buyer, Buyer shall promptly notify Seller and Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer. Notwithstanding any other provision contained in this Order, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation Buyer's external and internal costs of removing such a counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. In addition, Buyer may unilaterally terminate this order for convenience depending on the impact of the delivery of suspect/counterfeit parts on Seller's overall performance under this Order.

28 Complete agreement

This Order together with all attachments, exhibits, and other items specifically referenced in or attached to this Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written,

and agreements between the Parties, whether such understandings, proposals, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order. The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

29 Response to audit

Buyer shall not be prohibited from providing copies of this Order or any other document incorporated into this Order, to federal, state or other regulatory agencies as requested by either Buyer's or government auditors to comply with auditing procedures.

30 Delivery, title, sourcing

(a) The Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

(b) Title free of liens or encumbrances shall pass to Buyer upon acceptance (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.

(c) All deliveries shall be strictly in accordance with the applicable quantities and schedules described in this Order. Buyer reserves the right to:
- (i) return over shipments and early shipments at Seller's expense;
- (ii) have payment therefore withheld by Buyer until the date that Products or Services are actually scheduled for delivery; or
- (iii) be placed in storage, for which Seller shall be liable for the cost, until the delivery date specified in this Order.

Unless otherwise provided in this Order, delivery in whole or part shall not be made more than ten (10) days prior to the specified delivery date.

(d) Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. If Seller's delivery shall fail to meet the delivery schedule, Buyer, without limiting its other rights or remedies, may direct expedited routing, and any excess cost incurred thereby shall be debited to Seller's account.

(e) If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to:
- (i) terminate this Order; or
- (ii) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer; or
- (iii) accept late delivery and recover from Seller any costs Buyer incurs caused by the late delivery.

This condition shall not limit Buyer's other rights and remedies Buyer may otherwise have under this Order or applicable law.

(f) If Seller intends to source or ship direct from outside of Australia or the United States to Buyer then, in addition to complying with all applicable export regulations, Seller shall provide the name, country and contact information of the foreign sources within ten (10) days after Order acceptance. Seller proposed sources outside of Australia or the United States must have a reputation for honesty and a company policy prohibiting bribes and facilitating payments intended to expedite or secure performance of a routine governmental action, such as, customs clearance. Buyer retains the right to deny Seller's use of Seller proposed sources within thirty (30) days of Seller notification. Seller shall ensure that Buyer's purchase does not transit through one of the proscribed countries listed in ITAR, section 126.1 of title 22 of the United States Code of Federal Regulations, and the *Charter of the United Nations Act 1945* (Cth) or the *Autonomous Sanctions Act 2011* (Cth).

31 Packaging, packing, marking

(a) Unless otherwise specified in this Order, all shipments are to be made in accordance with Incoterms 2010, Delivered At Place – Buyer's Premises.

(b) Seller shall pack and ship Products at all times in accordance with best commercial practice having regard to the nature of the Products. Seller shall package and ship Aviation Products in accordance with ATA Spec 300, DEF(AUST)1000C *Australian Defence Force Packaging Standard* or any equivalent specification for packaging Aviation Products.

32 Inspection

(a) Buyer and its customer may inspect and test material, work in progress, Products and/or Services at all times and places during manufacture and otherwise. Failure to inspect and accept or reject Products or Services shall not relieve Seller from its responsibility for compliance with Order requirements, nor impose any liability on Buyer.

(b) Seller shall not substitute materials or accessories, even if Seller believes they are of superior quality, without written consent of Buyer.

(c) If the Products are specifically manufactured for Buyer in accordance with drawings, designs, or specifications furnished by Buyer:
- (i) Seller shall provide and maintain an inspection and quality control system acceptable to Buyer and provide access to Seller's facilities including all lower-tier subcontractors' facilities used in performance of this Order at all reasonable times, and without additional charge, for inspection by Buyer, and shall provide all tools, facilities, and assistance reasonably necessary for inspection relating to the performance of this Order;
- (ii) Seller shall maintain adequate and authenticated inspection and test documents which relate to work performed under this Order for a period of three years after completion of this Order or as otherwise specified in this Order, and shall make such records available to Buyer upon request;
- (iii) Seller shall supply Buyer with inspection and test reports, affidavits, certifications, technical documents generated or related to this Order, or any other documents as may reasonably be requested by Buyer;
- (iv) Seller shall notify Buyer in writing of any changes in Product and/or process definition and obtain Buyers written approval prior to proceeding; and
- (v) Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

33 Conflict minerals

If Seller is providing Products to Buyer under this Order, Seller shall use commercially reasonable efforts to:

(a) identify whether such Products contain tin, tantalum, gold or tungsten;

(b) determine whether any such minerals originated in covered countries, as defined in section 1502 of the United States *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the **Act**); and

(c) perform appropriate due diligence on its supply chain in support of Buyer's obligations under the Act.

In addition, Seller shall, as soon as reasonably practicable following the completion of the calendar year, provide a completed Conflict Minerals Reporting Template using the form found at http://www.conflictfreesourcing.org/conflict-minerals-reporting-template/. If requested, Seller will promptly provide information or representations that Buyer reasonably believes are required to meet Buyer's conflict minerals compliance obligations.

34 Privacy

In this clause, **Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth). Seller shall:

(a) if it collects Personal Information in the course of fulfilling the Order, use, keep or disclose that Personal Information only for the purposes of fulfilling the Order;

(b) comply with its obligations under the *Privacy Act 1988* (Cth);

(c) as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth of Australia would be a breach of the Australian Privacy Principles;

(d) notify Buyer as soon as reasonably practicable if Seller becomes aware of a breach or possible breach of any of the obligations contained or referred to in this clause, whether by Seller, Seller's Personnel or any other person to whom the Personal Information has been disclosed for the purposes of the Order; and

(e) ensure that any subcontract entered into for the purposes of fulfilling its obligations under the Order contains provisions to ensure that the subcontractor complies with this clause.

35 Freight charges

Freight charges, unless otherwise specified on this Order, shall be reimbursed at actual cost and shall be accompanied by legible copies of prepaid freight bills, express receipts, or bills of lading supporting the invoice amounts. Such invoices shall include:

(a) carrier’s name;

(b) date of shipment;

(c) number of pieces;

(d) weight; and

(e) freight classification.

36 Invoice and payment

(a) The Seller may only invoice Buyer upon completion of the shipment of the Products and/or completion of the Services to Buyer's satisfaction. The invoice must:

(i) be correctly addressed to the electronic address and person indicated on this Order;

(ii) list the Order number;

(iii) be a valid tax invoice for GST purposes; and

(iv) where Buyer requests it, be accompanied by documentation substantiating the amount claimed.

Buyer will pay all correctly rendered and undisputed invoices within 60 days from the latter of the end of the calendar month in which the valid invoice is received, or the delivery of the Products and/or Services in accordance with clause 30.

(b) If Seller is directed under this Order to ship Products to locations other than Buyer’s facility, Seller shall notify Buyer’s Representative within three (3) business days of completed shipment. Seller understands that Buyer will not issue payment under this Order until Buyer verifies receipt of Products at the location specified by Buyer and receipt is processed in Buyer’s system. Buyer shall be entitled at all times to set off:

(i) any amount owing at any time from Seller to Buyer or any of its affiliated companies;

(ii) any loss or damage resulting from Seller’s default under or breach of any contract (including this Order and any other orders); and

(iii) any adjustment for shortage or rejection and any associated costs, against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

37 Protection of information

(a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of this Order, then confidential or Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such agreement, and paragraphs (b) to (h) of this clause shall not apply.

(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (c) to (h) of this clause apply.

(c) For purposes of this clause, **Information** shall mean information disclosed to Seller by Buyer in connection with this Order which is either identified to Seller as being proprietary to Buyer or its customer or which is information that a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer’s Products, Services, equipment or processes, as well as duplicates, copies, or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed through no fault of Seller, or which is required by law to be disclosed, or which is rightfully received by Seller from a third party without obligation of confidence, or which is developed independently by Seller without reliance on any Buyer information.

(d) Information furnished to Seller shall remain Buyer’s proprietary property, shall be duplicated only as authorised in writing by Buyer, and shall be returned to Buyer or destroyed upon request or when no longer required for the performance of this Order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties except as specifically authorised by Buyer. Seller further agrees not to use any Buyer Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

(e) Neither the existence of this Order nor the disclosure of Buyer or customer Information or any other information hereunder shall be construed as granting expressly by implication, by estoppels or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Buyer or Buyer’s customer, except as specifically described in this Order.

(f) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller’s proprietary data and information will be used by Buyer only upon approval of Seller. Buyer may use unmarked Seller’s data and information for any purpose.

(g) Seller’s obligations with respect to Buyer Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly described in this Order, be affected by such performance in full, termination, or cancellation.

(h) Buyer or its authorised representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any Buyer Order, include provisions which secure for Buyer all of the rights and protections provided for by this clause.

(i) If any subcontractors performance involves the transmission, storage, processing or development of Proprietary Information, Confidential Information or Personal Information, over a network, the subcontractor shall apply the following basic safeguarding requirements and procedures to protect covered subcontractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorised users, processes acting on behalf of authorised users, or devices (including other information systems).
(ii) Limit information system access to the types of transactions and functions that authorised users are permitted to execute.
(iii) Verify and control/limit connections to and use of external information systems.
(iv) Control information posted or processed on publicly accessible information systems.
(v) Identify information system users, processes acting on behalf of users, or devices.
(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organisational information systems.
(vii) Sanitise or destroy information system media containing government contract information that is not intended for public release before disposal or release for reuse.
(viii) Limit physical access to organisational information systems, equipment, and the respective operating environments to authorised individuals.
(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
(x) Monitor, control, and protect organisational communications (i.e., information transmitted or received by organisational information systems) at the external boundaries and key internal boundaries of the information systems.
(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
(xii) Identify, report, and correct information and information system flaws in a timely manner.
(xiii) Provide protection from malicious code at appropriate locations within organisational information systems.

38 Conflicts of interest

Seller warrants to the best of its knowledge and belief, that no conflict or potential conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

39 Applicable language

This Order is made in the English language and all documentation to be provided in connection with this Order shall be in the English language and shall employ the units of measure customarily used by Buyer in the jurisdiction of Buyer's place of incorporation, unless otherwise specified. All notices and other binding communications may, unless otherwise specified, be sent by electronic mail, post, or other customary means.

40 Data breach notification

In the event Seller reasonably believes that unauthorised access to, disclosure of, or breach in the security of Buyer's data may have occurred, Seller, at its own cost and expense must:
(a) in the most expeditious manner possible, without unreasonable delay, and in any event no later than seventy-two (72) hours from becoming aware of the suspected breach, notify Buyer of any potential data security breach involving Buyer's data;
(b) promptly provide Buyer full details of the potential breach of the data security of Buyer's data;
(c) assist Buyer and any third parties authorised by Buyer, including law enforcement authorities, in investigating and remediating any
(d) potential breach of the data security of Buyer's data;
(e) promptly use best efforts to prevent a recurrence of any potential breach of the data security of Buyer's data; and
(f) cooperate with Buyer in notifying individuals injured or potentially injured by the potential breach of the data security of Buyer's data.

41 Anti-dumping/countervailing duties

Seller must affirmatively determine whether Seller's Product is subject to any Australian Anti-Dumping/Countervailing Duties (**AD/CVD**). Seller must notify Buyer in writing if Seller's Product is subject to AD/CVD at the time of contracting, or if Seller's Product becomes subject to AD/CVD at any time during the term of this Order.

42 Successors of parties

This Order is binding on the Parties and their respective legal representatives, trustees, successors and assigns.

43 Non-conforming products

If Seller delivers defective or non-conforming Products, Buyer may:
(a) accept all or part of the defective or non-conforming Products at an equitable price reduction;
(b) reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Seller at Seller's expense;
(c) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Product to comply in all respects
(d) with Order requirements and charge the expense incurred to Seller;
(e) procure the same or similar Products from a third party and charge the expense of the re-procurement to Seller; or
(f) terminate this Order for default in whole or in part.

44 Aviation products

If any Product provided under this Order is or includes Aviation Product, paragraphs (a) to (f) of this clause apply:
(a) Seller shall acknowledge receipt of the Order within five working days.
(b) Seller shall ensure that the part number, Commercial and Government Entity (**CAGE**) Code and serial number are clearly marked on each item. Seller shall ensure that all documents clearly identify the part number, CAGE code, condition code (i.e. new, unused), batch/lot number and or serial number, where required. All documentation shall be appropriately certified by an authorised person from Seller's quality control organisation.
(c) Seller shall, for each item, provide a list of all Airworthiness Directives and other modifications that have been complied with or are applicable.
(d) Seller shall ensure all Products are accompanied by the original or certified true copy of Seller's Authorised Release Certificate (**ARC**),
(e) or, where Seller is not the OEM, the ARC shall provide traceability back to the original manufacturer release documentation. Seller shall ensure the ARC contains, as a minimum, a description of Products and/or Services, including sufficient data such as lot/batch or serial numbers and remarks, etc. to ensure the traceability of the component back to and through its manufacturing process. Acceptance of Products and Services is conditional in part upon Buyer acceptance of traceability documentation. Where Seller has a National Aviation Authority (**NAA**) accreditation for the Services provided, an NAA approved ARC (e.g. EASA Form 1, FAA 8130-3, CASA Form 1), or, where Seller has no NAA accreditation, a certificate of conformity acceptable to Buyer shall be provided by Seller. The ARC shall describe any work carried out and/or the status, directly and by reference to supporting documentation,

necessary for the user or installer to determine the airworthiness of the item(s) in relation to the work being certified. If necessary, a separate sheet may be used and referenced from the main ARC. Each statement must clearly identify to which item(s) it is related. If there are no remarks to be made, Seller shall enter 'None'. Seller shall provide calibration certificates, including for subcomponents, on items requiring calibration. Seller shall provide test certificates as applicable and shop reports. Seller agrees to retain all documentation in accordance with their NAA accreditation requirements, or, where no NAA accreditation exists all documentation is to be retained for a minimum of seven (7) years.

(f) Seller shall ensure that all re-useable containers are not disposed of or destroyed and are returned to Buyer. Seller shall ensure all products are packaged to international standards for air or surface freight as appropriate to mode of transportation unless otherwise specified so as to ensure that no damage occurs in transit. Buyer shall accept no liability for damage, loss or delay in transit of Products or Services. Seller shall ensure that each item is individually packed in accordance with ATA Spec 300 so as to eliminate air, provide a barrier against UV radiation and prevent contamination from external sources. Seller shall ensure each package is clearly marked with the relevant Part Number, Batch Number, Cure Date or Date of Manufacture. Maximum age of products at time of delivery is not to exceed three (3) years from date of manufacture. Packaging and transportation of all items shall be in compliance with IATA standards on dangerous goods, quarantine, re-useable container, transportation mode, hazardous substances, and Electronic Static Sensitive Devices.

45 Prices, taxes and duties

The prices stated in this Order are in the currency stated in the Order and are not subject to exchange rate adjustments. Unless this Order expressly states otherwise, the price is all inclusive, including but not limited to any applicable GST and all packing, insurance and delivery charges, all taxes and duties, and all required permits and/or licences.

46 Hazardous substances

All Products and Services provided under this Order must enable Buyer and its customer, and their respective Personnel, to make use of the Products and Services without being in breach of *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth) (the **WHS Legislation**). Unless otherwise agreed by Buyer, Products must not contain any hazardous substances as defined in National Occupational Health and Safety Commission Approved Criteria for Classifying Hazardous Substances (NOHSC:1008(2004)). Under no circumstances shall the Products emit fumes, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to Personnel, the environment or the operation of other equipment, except where this is consistent with the end-use and nature of the Products. Where Buyer has agreed to accept a Product with hazardous substance(s), that Product must be accompanied by a Safety Data Sheet that complies with the WHS Legislation and the Code of Practice for the Preparation of Safety Data Sheets for Hazardous Chemicals (https://www.safeworkaustralia.gov.au/doc/model-code-practice-preparation-safety-data-sheets-hazardous-chemicals). Seller shall not under any circumstances provide any Product that contains asbestos. Seller shall provide evidence of compliance with this clause upon request by Buyer.

47 Software

If any Product provided under this Order is or includes software, paragraphs (a) through (f) of this clause apply:

(a) Seller shall warrant software Products for a period of 3 months, starting on the date of delivery to Buyer (the **Software Warranty Period**).

(b) During the Software Warranty Period, Seller shall rectify any failure, defect or deficiency (whether foreseen or unforeseen, latent or otherwise) which may arise or be discovered subsequent to delivery to Buyer (or to Buyer's customer) at no additional cost to Buyer, except that Seller may impose a reasonable charge only to the extent that Seller can demonstrate to Buyer's satisfaction that the failure, defect or deficiency:
  (i) arose out of the misuse of the software by Buyer;
  (ii) was caused by a third party; or
  (iii) was caused via operation with parts not supplied by Seller.

(c) All defects communicated by Buyer to Seller during the Software Warranty Period shall be promptly remediated to the satisfaction of Buyer. During the Software Warranty Period Seller shall actively participate with Buyer at no additional cost to assist Buyer to diagnose suspected or identified critical defects until the defect is remediated.

(d) Remediation of a defect shall, at Buyer's sole option, consist of:
  (i) cause of the defect is determined, documented, a defect remediation is implemented, and Seller is able to execute a positive acceptance test of that remediation;
  (ii) cause of the defect is determined, and documented, but Buyer elects not to implement the defect remediation; or
  (iii) cause of the defect is not determined but Buyer elects not to pursue remediation of the defect.

(e) If warranty action causes any part or whole of the deliverables to be not available for Buyer or Buyer's Customer's use within the Software

(f) Warranty Period, the Software Warranty Period shall be extended by the period of non-availability.

(g) In the event of an allegation, claim, suit, action or other proceeding against Seller and relating to intellectual property incorporating

(h) software, Seller shall procure, at Seller's expense, the right for Buyer to use the software and in the event that Seller does not (or cannot) do so, Buyer is entitled, at Buyer's discretion, to require Seller, at Seller expense, to:
  (i) make such alterations, modifications or adjustments so that the software becomes non-infringing without incurring a material diminution in performance or function; or
  (ii) replace the software with non-infringing substitutes provided that such substitutes do not entail a diminution in the performance or function; or
  (iii) refund to Buyer all amounts paid for the software upon the return of the software and all copies thereof to Seller.

48 Performance and Quality Requirements

(a) Quality Requirements
  (i) Quality Standards - Seller shall comply with Buyer's Supplier Flow-Down Requirements Document TE-302-XPG, which can be found in the Supplier Information section at thomas-global.com, as applicable, incorporated into this Order by reference, as well as any other specifications, workmanship standards or instructions specified in this Order. When furnishing assemblies or subassemblies that have a parts list detailed or specified on Buyer's drawing, Seller shall obtain the approved supplier part on such list from the approved supplier identified by the Buyer.
  (ii) Quality Level - Seller shall maintain a quality level of zero defects on all items delivered to Buyer.
  (iii) Quality Performance Effects - The parties agree that Seller's quality performance is subject to monitoring and that failure to maintain the quality requirements above may result in Buyer, in its sole discretion, electing to pursue any or all of the following actions:
    (A) Quality Corrective Action Plan: Buyer shall request and Seller agrees to submit a written corrective action analysis and recovery plan for all Products or Services that fail to meet the quality requirements defined

above. The quality corrective action and recovery plan shall be submitted within ten (10) days of Buyer's request and shall include a containment plan and a complete corrective action and recovery plan including root cause analysis. Seller's management will present the quality corrective action and recovery plan to Buyer for approval.

(B) Quality Performance Improvement Plan: Buyer shall request and Seller agrees to promptly prepare and submit a comprehensive quality performance improvement plan including a recovery plan when a Seller quality corrective action plan does not produce acceptable results. Seller's senior management will present the quality performance improvement plan to Buyer for approval.

(b) Forecasts - In the event Buyer has provided Seller any delivery forecast, such delivery forecast is being provided by Buyer without liability or obligation. Seller acknowledges and accepts that changes may occur in the delivery forecast, dates, and/or quantities listed therein and Seller releases Buyer from any and all costs, damages and claims resulting from such changes.

(c) Item Obsolescence – Seller shall promptly notify Buyer in writing after Seller identifies any Products or Services or components of any Products or Services as potentially becoming obsolete (Obsolete Item). Such notice shall be provided at least six (6) months prior to the anticipated obsolescence date. Twelve (12) months prior to ending its production of the Obsolete Item, Seller shall provide Buyer with a replacement Item for the Obsolete Item which has design parameters and specification documentation fully consistent with the Obsolete Item's then-current design parameters and requirements documents. Seller shall be liable for all qualification and certification expenses associated with transitioning to the replacement Item or components thereof. At Buyer's request, Seller shall also make a final production run of sufficient quantity of the Obsolete Item to satisfy Buyer's product life requirement.

(d) On-Time Delivery and Completion

(i) On-time Delivery Level - Seller shall maintain on-time delivery level of 100% on all Products and Services. Delivery is considered to be on-time when shipments are received no more than ten (10) days ahead or one (1) day after the scheduled delivery date.

(ii) Schedule Acceleration/Deceleration - Buyer may revise any delivery or completion schedule without cost or change to the unit price stated in this Order at any time by providing Seller with written or electronic notice of the revised schedule. Seller shall review and update Order status weekly, and must confirm delivery status including pull in and push out requests and cancellations.

(iii) Delivery Performance Effects - Seller's on-time delivery performance is subject to monitoring and the parties agree that Seller's failure to maintain the on-time delivery performance level waives any Buyer obligation to fulfill any commitment under this Order.

(A) Delivery Corrective Action Plan: In the event Buyer elects not to terminate this Order for failure to meet any scheduled delivery or completion date, Buyer and Seller will conduct quarterly reviews of Seller's delivery performance and implement a Seller delivery and completion corrective action analysis and recovery plan, to be submitted within ten (10) days of Buyer's request.

(B) Delivery Performance Improvement Plan: Should Seller fail to meet the delivery corrective action analysis and recovery plan, Seller shall promptly prepare and submit a comprehensive delivery performance improvement plan including a recovery plan for all Products or Services that fail to meet the delivery corrective action plan. Seller's senior management will present the delivery performance improvement plan to Buyer for approval.

(e) Remedies - The parties agree that failure to meet the Performance Requirements in this clause 48 may render Seller as a non-preferred supplier, in the sole discretion of Buyer, which can be considered as cause for re-negotiation or termination of this Order. The following remedies are also available to Buyer:

(i) Seller shall reimburse Buyer for all costs and expenses in connection with providing Seller and/or Seller's sub-tier suppliers' with technical, quality, or manufacturing assistance beyond that which Buyer would customarily provide to Seller or Seller's sub-tier suppliers 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 significant or recurring non-performance issues. 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 actual 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 such assistance.

(ii) Buyer reserves the right to impose liquidated damages in the amount of one percent (1%) of the price of each delayed Item for each day of delay in delivery or completion, commencing on the day following the due date, up to a total of one hundred percent (100%) of the price of the delayed.

(iii) Notwithstanding the foregoing, Buyer reserves all its rights and remedies at law or in equity.

(f) Business Continuity - 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 either NFPA 1600 version 2013 or ISO 22301 version 2012 or any subsequent version or update. The business continuity plan shall 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. If Seller, in Buyer's reasonable judgment, fails to comply with the requirements stated above, Seller shall provide Buyer with a reasonable quantity of consignment inventory, based on forecasted demand and previous Order history, to ensure Buyer that Seller is able to meet its performance obligations under this Order. Seller shall notify Buyer within twenty-four (24) hours after any event that may cause a disruption in Seller's ability to timely meet its performance obligations. Seller shall provide a written recovery plan to Buyer within fourteen (14) days after such an event, defining how and when performance will resume to support this Order.