



Aerosonde Pty Ltd  
ACN 084 967 797

Aerosonde Pty Ltd  
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## TERMS AND CONDITIONS FOR PURCHASE ORDERS AND SUBCONTRACTS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document and all other documents comprising the Order:

- (a) **Buyer** means Aerosonde Pty Ltd ACN 084 967 797 and its duly authorized representative(s). The Buyer stated on the accompanying Purchase Order is the only authorized representative for this Order.
- (b) **Contract Products** means the goods, technical data, drawings, services or other items constituting the subject matter of the Order to be provided by the Seller in accordance with this Order.
- (c) **DPPM** means the Defence Procurement Policy Manual issued by the Defence Materiel Organisation of the Commonwealth Department of Defence, as updated or amended from time to time.
- (d) **GST** means the goods and services tax as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the **Act**) or similar tax imposed under the GST Law (as defined in the Act) or any similar tax introduced to replace that tax.
- (e) **Order** means the Purchase Order and these terms and conditions and, to the extent applicable, any other documents specified in the Purchase Order and any modification or variation to this order agreed by the Buyer and the Seller in writing.
- (f) **Payment Amount** means the amount payable by the Seller in respect of the Contract Products as indicated in this Order, and consists of the base price for the Contract Products (including all packaging, crating, [delivery and shipping]) plus GST and any other applicable federal, state and local taxes, duties, tariffs and similar fees imposed by any government. The Payment Amount indicated in the Order is firm for the delivery period shown.
- (g) **Purchase Order** means the purchase order to which these terms and conditions are attached.
- (h) **Seller** means the person, firm, or corporation identified in the Purchase Order as the supplier of the Contract Products described in this Order.

1.2 In this Order unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) the word "month" means calendar month and the word "year" means twelve calendar months;
- (c) a reference to writing includes any communication sent by post or facsimile transmission;
- (d) where any word or phrase is defined, in the other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (e) all monetary amounts are in Australian currency, unless stated otherwise;
- (f) a reference to time refers to time in Melbourne, Australia;

- (g) mentioning anything after "include" or "includes" or "including" does not limit what else might be included;
- (h) no rule of construction applies to the disadvantage of a party because this Order is prepared by (or on behalf of) that party;
- (i) a reference to anything is a reference to the whole and each part of it.
- (j) headings in this Order are for convenience only and do not affect its interpretation or construction.

### 2. ACCEPTANCE

This Order is the Buyer's offer and shall become binding on the Buyer and the Seller only when accepted, either by the Seller's signed acknowledgement of this Order, by the Seller's commencement of performance, by shipment of any of the Contract Products, or by the Seller's dispatch of the Seller's sales acknowledgement, provided that such sales acknowledgement is in accordance with this Order in all respects. By acceptance using any of these methods, the Seller agrees to all of the terms and conditions set forth in the Order. The Buyer will not be bound by any different or additional terms in the Seller's acceptance. The terms set forth in this Order constitute the entire agreement of the parties and prevail over any acceptance or acknowledgement from the Seller and supersede all previous verbal or written representations, offers, or agreements. No modifications of the requirements of this Order will be binding unless authorized by the Buyer in writing.

### 3. DELIVERY

3.1 The Buyer's production schedules are based upon the agreement that the Contract Products will be delivered to the Buyer by the date or dates specified on this Order (**Delivery Schedule**). Time is, therefore, of the essence of this Order.

3.2 If the Seller is delayed in meeting the Delivery Schedule for any reason whatsoever, it must promptly notify the Buyer in writing of the delay, its anticipated duration, its causes, and the Seller's proposed remedy. If the Seller's deliveries fail to meet the Delivery Schedule, the Buyer reserves the right to terminate the Order in whole or in part, acquire the Contract Products elsewhere, and to charge the Seller for any additional costs and expenses that result. Such rights shall be in addition to any other remedies provided by law.

### 4. QUANTITY

Shipments must equal exact amounts ordered unless otherwise agreed upon in writing by the Buyer. Invoices shall be honored and paid for only those quantities indicated on the Order or otherwise authorized in writing by the Buyer. Excess quantities shall be held by the Buyer at the Seller's risk, for a period of thirty (30) days. Arrangements for return, including handling and shipping costs, must be effected during the thirty-day period, at the Seller's expense. Subsequent to the thirty-day period, all excess Contract Products shall be returned to the Seller at Seller's expense. All charges for the return shall be setoff against any payment due to Seller.

### 5. ADVANCE MANUFACTURE

The Seller shall not, without the Buyer's written consent, manufacture in advance of reasonable flow time, or deliver substantially in advance of the Delivery Schedule. The Buyer may return, at Seller's expense, Contract Products received substantially in advance of the Delivery Schedule.

## 6. TITLE AND RISK OF LOSS

The Seller must not reserve title or a security interest in products shipped to the Buyer. For products shipped F.O.B. the Seller's facility and for which the Seller has no obligation to assemble, install or test at destination, the risk of loss or damage shall pass to the Buyer upon delivery of the product properly packed to the carrier. For products shipped F.O.B. destination and for which the Seller has no obligation to install, assemble or test at destination the risk of loss or damage shall pass to the Buyer upon delivery of the product to the Buyer's dock. For products for which the Seller has the obligation to assemble, install or test at destination, the risk of loss or damage shall not pass to the Buyer until final acceptance regardless of the F.O.B. point.

## 7. PACKING AND SHIPPING

7.1 Unless otherwise specified in the Order, all Contract Products are to be packed in accordance with good commercial practice and shall be forwarded and classified in accordance with good commercial practice to obtain the most economical transportation rate. Any extra transportation costs or other losses accruing from deviations from the Buyer's route and delivery instructions will be charged to the Seller's account.

7.2 A complete packing list shall be enclosed with all shipments including but not limited to, the Order number, the Order item number, description of the Contract Products, sizes, and quantity. Bills of Lading shall include the number of pieces and weight of the shipment.

7.3 The Seller shall mark containers or packages with necessary lifting, loading, and shipping information, as applicable, including the Buyer's Order number, date of shipment, and the names and addresses of consignor and consignee.

## 8. INSPECTION and ACCEPTANCE

8.1 The Seller must perform all examinations, inspections, and tests, or assume responsibility for others to do so, necessary to insure that the Contract Products furnished are in complete conformity with all requirements of this Order.

8.2 The Seller must permit the Buyer, including the Buyer's customer when accompanied by the Buyer, to have access to all facilities used in performance of this Order, and to all applicable records, for inspection, testing and verification of Contract Products. The Seller shall make this provision a flow down to its suppliers. If inspection and/or testing is carried out at the premises of the Seller or its supplier, the Seller must furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Final inspections shall be at the Buyer's premises unless the Buyer directs otherwise in writing.

8.3 Deviations from technical specification documents or Seller's quality control documents must be approved by the Buyer in writing prior to the occurrence of any such deviation. If any of the Contract Products are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, including any technical specification and quality control documents (**Nonconforming Contract Products**) the Buyer will be entitled to reject the Nonconforming Contract Products or require that the Nonconforming Contract Products be corrected or replaced promptly. Nonconforming Contract Products shall be identified by the Seller and removed from normal production flow until correction or replacement is complete. The Seller may not repair by welding, brazing, soldering, or adhesive, parts that are found faulty during manufacturing without Buyer's approval.

8.4 Nonconforming Contract Products shall be returned at the Seller's expense including packaging, transportation and handling costs. If the Buyer rejects Nonconforming Contract Products or if the Seller, when requested by the Buyer, fails to proceed promptly with the replacement or correction of those products, the Buyer may either terminate this Order for default, or may replace or correct the Nonconforming Contract Products and in either event may charge the Seller all costs, expenses and damages suffered or incurred by the Buyer in relation to or concerning those Nonconforming Contract Products.

8.5 Acceptance of the Contract Products by the Buyer will not relieve the Seller of its liability for Contract Products that do not conform to the requirements of this Order, including the Delivery Schedule. The Seller's liability shall include any reduction in value of Nonconforming Contract Products and any other incidental or consequential damages

which the Buyer may suffer on account of failure to conform with the requirements of this Order. If the Buyer elects to accept Nonconforming Contract Products, the parties will negotiate in good faith for an equitable reduction in the Payment Amount and payment will be withheld during the course of such negotiations.

8.6 The Seller shall maintain an inspection system in accordance with sound business practice and as otherwise specified in this Order. Records of all inspections by the Seller shall be kept complete and available to the Buyer during the performance of this Order and for three (3) years after final payment or as may be specified elsewhere in this Order.

8.7 The methods of inspecting and testing for purposes of the Buyer's acceptance of the Contract Products shall be determined in the Buyer's sole discretion and may include statistical sampling methods. Inspection, testing and acceptance of any Contract Products shall not waive, modify, limit, or constitute compliance with any of the warranty or other obligations imposed on the Seller in this Order or otherwise.

8.8 The Seller acknowledges that the nature of the Buyer's business requires the Buyer to reserve the right to cancel the Order for default if the Seller fails in any respect to meet all of the Order requirements. Consequently, if installment delivery is permitted or authorized by the Order, conformance of each unit with all the Order requirements is essential and timely performance of each installment is of the essence of the Order. The Seller's failure to perform strictly in accordance with this Order, regardless of whether accompanied by an offer to cure will substantially impair the value of the Order. Buyer has the right, at its election, to either reject in its entirety any late delivery, cancel the remaining portion of the Order for default because of said late delivery, or both.

8.9 The Buyer will have the right to reject all or any part of any lot (or installment) whenever any Contract Product within the lot (or installment) fails acceptance testing. Alternatively, at the Buyer's election, the Buyer may subject each Contract Product of the lot (or installment) to acceptance testing in order to determine which units are acceptable and which are not, in which event the Buyer shall have the right to charge and deduct from the price otherwise payable to the Seller all of the Buyer's direct costs associated with handling and testing the products to the extent those costs exceed the testing costs originally contemplated by the Buyer, together with a reasonable allowance for staff costs and other overheads referable to the testing. Regardless of whether the Buyer elects to reject all or any part of a lot (or installment) whenever any Contract Product within such lot (or installment) fails acceptance testing by the Buyer, and regardless of whether the Seller offers to cure any nonconformity, the Buyer will have the right to cancel the remainder of this Order for default.

## 9. INVOICES/PAYMENTS

9.1 Subject to these terms and conditions, the Buyer will pay the Seller the Payment Amount stated in the Order for the Contract Products.

9.2 The Seller shall forward to the Buyer an invoice in respect of the Contract Products. The invoice must also be a "tax invoice" for the purpose of the GST Law, and must be accompanied by a receipt document or Bill of Lading signed by the carrier and evidencing the fact that the shipment has been made.

9.3 The Seller's right to payment is contingent upon the Buyer's approval and acceptance of the Contract Products, but payment of the Payment Amount or any part of the Payment Amount is not evidence of the Buyer's final acceptance. The cash discount period to the Buyer, if any, will date from the latest of (a) the receipt of the invoice (not from the date of the invoice), (b) the actual date of acceptance of the Contract Products, or, (c) the delivery date specified in this Order. If no discount is offered, payment of invoices will be made within thirty (30) days after the latest of the above.

9.4 Invoices that do not agree with the quantity, prices (including calculations of GST) or other terms of this Order or do not serve as a "tax invoice" within the meaning of the GST Law will be returned to the Seller for corrections. The time for payment will commence upon receipt of the corrected invoice by the Buyer.

9.5 If any technical data or software or any part thereof as required by this Order is not delivered within the time specified or is deficient upon delivery, the Buyer may, until such data or software is accepted, withhold payment to the Seller of twenty percent (20%) of the total Payment Amount. Payments shall not be withheld nor any other action taken pursuant to this clause when the Seller's failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the Seller.

## 10. WARRANTY

10.1 The Seller warrants and represents that it is able and suitably qualified and experienced to supply the Contract Products in accordance with this Order; that it will exercise due skill, care and diligence in the supply of the Contract Products in accordance with the Order; that the Contract Products are new and of the most suitable grade of their respective kinds, will conform with the requirements of the Order, will be free from all defects of materials and design, will be of a consistent and merchantable quality, will conform strictly to the specifications, drawings, or samples specified or furnished, will conform strictly to any legally applicable standards and comply with all relevant legislation, will be fit for the purpose for which the Contracts Products are to be used as identified in the Order, and will meet all of the performance requirements of the Order.

10.2 The Seller warrants and represents that it will comply with all applicable statutes and rules, regulations and orders of any relevant government body or authority.

10.3 The Seller warrants and represents that the Contract Products, and the sale and use of those products, do not infringe or contribute to the infringement of any applicable patent, registered design, copyright or other intellectual property or proprietary right.

10.4 The warranties in this clause are in addition to all express warranties. All warranties and representations will not be affected or limited in any way by any inspection, design approval, delivery, acceptance or payment by the Buyer. All warranties and representations are made to, and are to the benefit of, to the Buyer, its successors, assigns, customers, and the users of the Contract Products. All warranties will be construed as conditions as well as warranties and will not exclude or limit any other terms or conditions.

10.5 The Seller agrees to replace, or to correct promptly without expense to the Buyer, including transportation and handling costs, any Contract Products not conforming to the requirements of this Order when notified by the Buyer during a period of twelve (12) months after final acceptance.

10.6 If the Seller, upon notice of any defect or other non-compliance with the foregoing warranties, fails promptly to correct or replace Contract Products as required by the Buyer, the Buyer may, without further notice, correct, or replace such Contract Products, or engage a third party to do so, and charge the Seller for all costs and expenses incurred as a result. Contract Products which have been rejected must not thereafter be tendered for acceptance unless the former rejection and correction is identified, and such repaired or replacement Contract Products shall be subject to these terms and conditions to the same extent as the original supplies. All warranties shall then run from the latter delivery date.

## 11. CHANGES

11.1 The Buyer may, at any time, by a written notice or change order, without notice to any sureties or assignees, make changes to this Order and the Seller must proceed immediately with the Order as changed. The Seller shall notify the Buyer within fifteen (15) calendar days of any increase or decrease in cost caused by such changes and an equitable adjustment in prices or other terms shall be agreed upon in a written revision to this Order.

11.2 Failure to agree upon any adjustment in prices or other terms resulting from any change(s) made by the Buyer pursuant to the provisions of this clause, shall be deemed a dispute concerning a question of fact within the meaning of the clause of this Order entitled "Disputes."

11.3 The Seller may not change any process, material or procedure approved previously by the Buyer, or previously qualified by the Seller, without prior re-approval by the Buyer or otherwise with the written consent of the Buyer.

## 12. CONTROL OF DRAWING CHANGES

The Seller's inspection system shall provide for procedures which will ensure that the latest applicable drawings, specifications, and instructions required by the Order, as well as authorized changes to them, are used for fabrication, inspection, and testing of all Contract Products.

## 13. DISPUTES

Except as otherwise provided in this Order, any dispute

concerning a question of fact between the Buyer and the Seller arising under this Order which is not disposed of by agreement shall be subject to whatever remedies shall be available to either of them pursuant to this Order or otherwise. Pending a final agreement concerning any dispute in relation to this Order, or in the event the Buyer and the Seller fail to reach an agreement, pending a final decision by a Court of competent jurisdiction, the Seller must proceed diligently with the performance of the Order and in accordance with the Buyer's directions.

## 14. INDEMNITY

Seller shall indemnify and hold harmless Buyer, its directors, officers, employees, agents and invitees, from and against all liability, demands, claims, losses, costs, damages, and expenses, including but not limited to legal costs and expenses (on a solicitor/client basis) based upon, connected with or arising out of the performance of the Order by or for Seller (including without limitation any liability, demands, claims, losses, costs, damages, and expenses arising from the failure of the Seller to provide a "tax invoice" in accordance with clause 9).

## 15. INTELLECTUAL PROPERTY INDEMNITY

15.1 Seller must indemnify and hold harmless Buyer from any and all damages, costs (including legal costs and expenses) losses, and liabilities resulting from, or arising in connection with, a suit, claim or proceeding of alleged infringement of any intellectual property or other proprietary rights by reason of the sale or use of any Contract Product supplied or sold to Buyer pursuant to this Order, and from all expenses incurred by Buyer in defense of such suit, claim or proceeding if Seller does not undertake the defence thereof; provided that Seller is notified of any such suit and (except for suits against the Commonwealth) Buyer offers Seller full and exclusive control of the defence of such suit, claim or proceeding when products of Seller only are involved therein or the right to participate in the defence of such suit, claim, or proceeding when products other than those of Seller are also involved therein. This indemnity shall not extend to infringement resulting solely from the Seller's compliance with the Buyer's specific designs.

15.2 In the event of an injunction or restraining order, the Seller must, at its own expense, either procure for the Buyer the right to continue to sell and use the item, or replace or modify the item so that it becomes non-infringing. The Seller agrees, without limitation, that its indemnity under this clause 15 will cover all amounts the Buyer may become liable to pay the Buyer's customers and agents pursuant to an indemnity the Buyer has provided to one or more of them on terms and conditions similar to this clause 15.

## 16. ASSIGNMENT AND SET-OFF

16.1 The Seller must not delegate any duties or assign any rights under this Order without the Buyer's prior written consent.

16.2 Seller shall make no contract or arrangement with any other party for furnishing any of the completed or substantially completed Contract Products without the written approval of Buyer. This will not apply, however, to any contract for the furnishing of standard or commercial articles or raw materials.

16.3 All claims for monies due or to become due from the Buyer shall be subject to deduction by the Buyer, for any set-off or counterclaim arising out of this or any other of the Buyer's Orders with the Seller whether such set-off or counterclaim arose before or after any such claim or assignment by the Seller.

## 17. SUPPLEMENTARY INFORMATION

Any specifications, drawings, instructions, engineering notices or technical data referred to in this Order are agreed to be incorporated in this Order by reference as if fully set forth. In case of any discrepancies or questions on any matter arising from this Order, the Seller must request from the Buyer a decision, instruction, or interpretation of such matters, and then act in accordance with that decision, instruction, or interpretation.

## 18. GOVERNING LAW

This Order is governed by and shall be interpreted in accordance with the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria in connection with matters concerning the Order.

## 19. DATA AND PROPERTY RIGHTS

19.1 The Seller will not provide any proprietary information or material without prior execution of a proprietary information exchange agreement. If

any proprietary information or material is provided without an agreement in place, the parties agree that proprietary information and material will be non-proprietary regardless of any markings and the Buyer will be entitled to use and disclose that proprietary information and material as it sees fit.

19.2 The Buyer retains all rights in and title to all data, information and materials furnished by the Buyer to the Seller and intended for use in connection with this Order. The Seller agrees that all such data, information and materials together with all writings, ideas, concepts, techniques, software (including source code), inventions, improvements, and discoveries conceived or reduced to a material form by the Seller, or any employee, officer, agent or representative of the Seller pursuant to or in connection with this Order (collectively, the **Buyer IP**), shall be and remain the exclusive property of the Buyer. The Seller assigns to the Buyer all rights it has, or may have in the future, in all Buyer IP. The Seller shall use Buyer IP only in connection with this Order and must not disclose Buyer IP to any person, firm, or corporation, other than the Buyer's or the Seller's employees, subcontractors, or Government inspectors as may be necessary to complete this Order. The Seller must upon the Buyer's request or upon completion of this Order, whichever occurs first, promptly return all drawings and specifications and all records of Buyer IP to the Buyer.

19.3 All property, including materials, tools, designs, and patterns furnished, or specifically paid for, by the Buyer shall be owned by the Buyer, and may be removed at any time without additional costs upon demand by the Buyer, and must only be used in filling orders from the Buyer, and must be kept separate from other property on the Seller's premises and must be clearly identified as the property of the Buyer.

19.4 The Seller assumes all liability for loss or damage, (with the exception of normal wear and tear) to materials, equipment and Buyer IP provided to it by, or held by it with the consent of, the Buyer.

19.5 If this Order arises out of a Government contract with the Buyer (or a related entity), the Seller hereby conveys to the Buyer all rights to technical data, computer software, data bases and other intellectual property, including rights under any applicable copyright laws, to permit the Buyer to fulfill its obligations under its Government contract.

19.6 The Seller agrees to do all things necessary to give effect to the provisions of this clause 19 including executing any further document required by the Buyer and securing all necessary moral rights consents from each individual involved in the creation of any copyright work.

## 20. BUYER FURNISHED ITEMS

If, in the performance of this Order, the Buyer furnishes the Seller with components or other items to be incorporated by the Seller in the Contract Products to be delivered to the Buyer, the Buyer does not waive its right to require the level of quality specified for the Contract Products to be delivered by the Seller. The Seller agrees to replace any components or other items furnished by the Buyer that are damaged by the Seller or the Seller's agents, or to reimburse the Buyer for the same.

## 21. SPECIAL TOOLING

If the Buyer's Order includes special tooling, payment of Seller's invoices for said special tooling are contingent upon acceptance by the Buyer's receiving inspection of the first piece produced by the special tooling.

## 22. NO GRATUITIES

Seller warrants that neither it nor any of its employees, agents or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Order or securing favorable treatment under or in connection with this Order.

## 23. FORCE MAJEURE

A party which is, by reason of Force Majeure, unable to perform an obligation or condition required by the Order to be performed shall as soon as reasonably practicable give the other party written notice of reasonably full particulars of the event, occurrence or circumstance of Force Majeure, including the likelihood of resumption of full performance of its obligations, and (where possible) the means proposed to be adopted to remedy, abate or mitigate the effects of Force Majeure. For the purposes of this clause, **Force Majeure** means any event, occurrence or circumstance not within the control of a party and which, by the exercise of reasonable care, that party is not able to prevent, overcome or provide

against. Where an event of Force Majeure precludes or limits performance under this Order for a period exceeding 30 days, the party not the subject of the Force Majeure event may terminate this Order by written notice to the other party.

## 24. INDEPENDENT CONTRACTOR

24.1 The parties agree that the Seller is an independent contractor during the performance of the work specified in this Order. The parties also agree that nothing in this Order would constitute a partnership or joint venture or create a fiduciary relationship between the parties.

24.2 The Seller warrants that it will not engage in conduct that would suggest to any customer or potential customer of the Buyer or the Seller that the Seller has the authority to accept orders or otherwise bind the Buyer.

## 25. RELEASE OF INFORMATION AND CONFIDENTIALITY

25.1 The Seller shall not advertise or make any public announcements, news releases or other forms of releases of information to the public concerning this Order, the Buyer, or the Buyer's affairs without prior written approval from the Buyer.

25.2 The Seller shall, and will ensure that the Seller's personnel shall, keep confidential, shall not disclose to any third party nor use (other than for the purposes of this Order) without the prior written consent of the Buyer, any confidential or proprietary data or information obtained as a consequence of the Order (except in so far as the same may be part of the public domain or where disclosure is required by law) and shall take or cause to be taken such reasonable steps as may be necessary for the compliance with the above obligations, which shall survive the expiration or termination of the Order and shall be enforceable at any time.

## 26. INSURANCE

26.1 The Seller shall keep all materials, tools and equipment, special or otherwise, in which the Buyer has any interest, insured against risk of loss or damage by fire or other unforeseen event for their full value at the Seller's own expense while they remain in the Seller's possession.

26.2 The Seller shall maintain insurance coverage for both bodily injury and damage to the Buyer's and Government property and property of third persons in the following minimum amounts during the term of this Order and for a period of 12 calendar months following its expiry or termination:

- (a) A Commercial General Liability insurance policy, including contractual liability, with limits of liability for bodily injury and property damage of at least One Million (\$1,000,000) Dollars per occurrence and two million (\$2,000,000) dollars annual aggregate. The Buyer shall be named as an additional insured on all such insurance policies.
- (b) Workers' Compensation insurance for statutory benefits and Employer's Liability of at least one million (\$1,000,000) dollars, including coverage for occupational disease.
- (c) A product liability insurance policy with limits for bodily injury and property damage of at least one million (\$1,000,000) dollars, per occurrence. The Buyer shall be named as additional insured on all such policies.
- (d) A Property insurance policy covering all the Seller's property, equipment, materials and supplies to be used in connection with the work.

26.3 The Seller must indemnify the Buyer against all liability, claims and/or demands due to personal injury, including death or property loss arising out of performance of this Order and in connection with the Contract Products or any of them. The Seller must defend any and all actions based on any such matter, at its own expense.

## 27. KEY PERSONNEL

The Seller must take all reasonable steps to avoid changes of key personnel assigned to the Order and to avoid any conflicts of interest between the demands of the Order and other work outside the Order. Key personnel of the Seller must be available to do that work allocated to the resource in the plans agreed to with Buyer, so that the requirements of the Order are fulfilled in accordance with this Order.

## 28. STOP WORK ORDER ("SWO")

28.1 The Buyer may at any time, by written SWO to the Seller, require the Seller to stop all, or any part, of the work called for by the Order for a period of ninety (90) days, and for any further period to which the parties may agree. Any such SWO shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of a SWO, the Seller must comply with its terms and take all reasonable steps to minimize the incurrence of costs referable to the work covered by the Order during the period of work stoppage. Within a period of ninety (90) days after a SWO is delivered, or within any extension of that period to which the parties shall have agreed, the Buyer shall either:

- (a) cancel the SWO; or
- (b) terminate the work covered by the SWO as provided in the termination clause below.

28.2 If a SWO issued under this clause is cancelled or the period of the SWO or any extension of it expires, the Seller must resume work. An equitable adjustment shall be made in the Delivery Schedule, the Payment Amount, or both, and the Order must be modified in writing accordingly, if:

- (a) the SWO results in an increase in the time required for, or the Seller's costs properly allocated to, the performance of any part of the Order; and
- (b) the Seller asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage, provided that, if the Buyer decides the facts justify such action, it may receive and act upon any such claim asserted at any time prior to final payment under the Order.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the disputes clause of the Order.

28.3 If a SWO is not cancelled and the work covered by such SWO is terminated for the convenience of Buyer, the reasonable costs resulting from the SWO shall be allowed in arriving at the termination payment, if any, pursuant to the termination clause below.

**29. WORK ON BUYER'S OR ITS CUSTOMERS PREMISES**

For work to be performed on the Buyer's premises or one of its customers' sites, the Seller must take all necessary precautions to prevent the occurrence of any injury to persons or property, and except to the extent that any such injury is due solely and directly to the Buyer's or its customer's gross negligence, as the case may be, shall indemnify the Buyer against all loss which may result, in any way, from any act or omission of the Seller, its agents, employees, or subcontractors, and the Seller shall maintain and furnish the Buyer, upon request, with copies of such public liability, property damage and employer's liability compensation insurance as will protect the Buyer from said risks and from any claims under any applicable law.

**30. WAIVER**

The failure of the Buyer to enforce at any time any of the provisions of this Order or to exercise any other rights contained in this Order, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Order or any part of it, or the rights of the Buyer to enforce each and every such provision at any time. The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

**31. TERMINATION**

31.1 The Buyer may, by written notice to the Seller, terminate this Order or any part of it, for its sole convenience (or, if this Order is submitted to Seller in connection with a prime contract between the Buyer and the Commonwealth Government, for the sole convenience of the Commonwealth Government). In the event of such termination, the Seller shall immediately stop all work under this Order and must immediately cause all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, the Seller shall be paid a portion of the Payment Amount reflecting the actual costs incurred for the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer (using its standard record keeping system) that have resulted from the termination. The Seller must submit its claim no later than ninety (90) days after receipt of the termination notice. The Seller must make reasonably available to the Buyer or the Buyer's representative, any directly related books, records

and papers supporting its claim. Upon the Buyer's payment to the Seller in accordance with this paragraph, title to all Contract Products, materials, work-in-progress, special tooling, finished products, and anything acquired for this Order, and any plans, drawings, specifications, information, and other things that would have been required to be delivered to the Buyer shall vest in the Buyer and the Seller must immediately deliver them to the Buyer.

31.2 The Buyer may immediately terminate the Order in whole or in part by written notice to the Seller, upon the occurrence of any of the following events (**Termination for Default**):

- (a) if the Seller fails or refuses to perform in accordance with any of the requirements of this Order or fails to make progress so as to endanger performance hereunder;
- (b) if the Seller becomes insolvent, makes a general assignment for the benefit of creditors, suspends any of its operations, or if any petition is filed or proceeding commenced by or against the Seller (whether voluntary or involuntary) under any federal or state law, or under any agreement, instrument, security interest, or similar arrangement, relating to bankruptcy, arrangement among debtor and creditors, reorganization, receivership, liquidation, administration or assignment for the benefit of creditors; or
- (c) if the Seller fails to deliver the Contract Products or to perform any additional services within the time or at the rates specified.

31.3 Any Termination for Default will be without liability on the part of the Buyer except for completed items delivered and accepted by the Buyer, payment for which can be set off against damages suffered or incurred by the Buyer. The Buyer may require the Seller to transfer title and deliver to the Buyer any or all property produced or procured by the Seller for performance of the work completed as at the date of termination and the Seller shall be credited with the reasonable value thereof not to exceed the Seller's actual costs or the Payment Amount, whichever is less. The Seller will be liable for damages caused by or resulting from its default including but not limited to the costs of re-procurement. If, after a Termination for Default, it is determined that the Seller was not in Default or that adequate assurances had been provided, the termination shall be deemed a termination for convenience in accordance with the first paragraph of this clause. The Buyer or its designee shall have the right to audit all elements of any termination claim and the Seller must make available to the Buyer on request all books records and papers relating thereto.

31.4 Termination of the Order pursuant to this subparagraph shall be without prejudice to any other rights and remedies of the Buyer under this Order as at the date of termination, or under statute or common law.

**32. NON MERGER AND SURVIVAL OF INDEMNITIES AND WARRANTIES**

The indemnities, covenants and warranties and any other provisions of the Order shall not merge on completion of the Order unless expressly set out in the Order. The indemnities contained in the Order are continuing obligations and remain in full force and effect following completion or termination.

**33. TAXES**

33.1 The Seller agrees to pay to the Buyer all taxes, duties, levies and fees including all stamp duty, registration fees, fines, penalties and other taxes or charges other than income tax (including any liability with respect to or resulting from delay or omission to pay such taxes or other charges), which may be payable, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Order or any other instrument created pursuant to this Order or in respect of any transaction contemplated by this Order or any such instrument.

33.2 The Seller indemnifies the Buyer in respect of all claims, demands, actions, proceedings, costs, expenses and liabilities (including fines and penalties) relating to all amounts for which the Seller is liable pursuant to sub-clause 33.1.

**34. GOVERNMENT CONTRACT**

34.1 The Seller acknowledges that this Order may be submitted by the Buyer in connection with a prime contract between Buyer (or an affiliate of the Buyer) and the Commonwealth Government, represented by the

Department of Defence or another body or agency.

34.2 The Seller agrees that if the Order has been made subject to a prime contract between the Buyer (or its affiliate) and the Commonwealth Government, then this Order shall incorporate by reference all relevant provisions of the prime contract and shall be subject to the additional terms and conditions (if any) set forth on Schedule 1 to this Order. Without limiting the generality of the foregoing, the Seller agrees and acknowledges as follows:

- (a) that the Seller shall, upon request, execute a deed in favour of the Commonwealth under which the Seller grants rights to the Commonwealth substantially equivalent, to the extent applicable, to the rights granted by the Buyer (or its affiliate) to the Commonwealth under the prime contract to which this Order relates and shall do all such other things as the Commonwealth, or the Buyer, may request of the Seller that are necessary or desirable to cause this Order to satisfy the terms and conditions of that prime contract;
- (b) that the Buyer may be obliged to provide the Commonwealth with a copy of this Order and the documentation relating to it, and the Seller consents to such provision;
- (c) that the Seller may be obliged to, and shall, comply with any relevant applicable terms and conditions of the prime contract to which this Order relates, and acknowledges that such terms and conditions may impose obligations on the Seller in respect of (among other things):
  - (i) the Commonwealth's right to terminate for convenience;
  - (ii) the Seller's obligation to provide value-for-money as defined in the relevant prime contract;
  - (iii) the Seller's obligation to provide the Buyer, on request, with unbundled pricing and a full breakdown of direct costs, overhead rates, contingencies, allocation of recurring costs and profit margins;
  - (iv) the Seller's obligation to provide Australian made content;
  - (v) the Seller's obligation to maintain records and provide the Commonwealth with access to such records;
  - (vi) the Seller's obligation to grant the Commonwealth access to the Seller's premises as required;
  - (vii) compliance by the Seller with any security requirements notified to the Seller by the Buyer or the Commonwealth, including obtaining the level of security clearance required by the Commonwealth, ensuring that staff and personnel of the Seller are aware of and comply with such security requirements, submitting to any security checks or clearances as required by the Commonwealth, and notifying the Commonwealth of any changes to circumstances which may affect the capacity of Seller to comply with the Commonwealth's security procedures;
  - (viii) compliance by the Seller with any applicable security requirements when Commonwealth facility clearance is required; and
  - (ix) such other terms and conditions as may be imposed on the Seller in accordance with the Buyer's (or its affiliate's) obligations under the prime contract between the Buyer (or its affiliate) and the Commonwealth.

34.3 Furthermore, and without limiting the foregoing, the Seller agrees that it shall upon request from the Buyer or the Commonwealth familiarise itself and ensure compliance by it, its staff, personnel and subcontractors with the following policies to the extent applicable:

- (a) Australian Government Policy and Guidance on Industry Development and Local Purchasing as detailed in the DPPM, Section 3, Chapter 3.12;
- (b) Company ScoreCard policy as detailed in the Defence Company ScoreCard Policy Statement;
- (c) Conflict of Interest policy as detailed in the DPPM, Section 3, Chapter 3.13;
- (d) Contract publication policy as detailed in the DPPM, Section 5, Chapter 5.8;
- (e) Defence Equity and Diversity policy as detailed in the Defence Plain English Guide to the Managing and Reporting Unacceptable Behaviour; DPI 1/2001; and DI(G) PERS 35-3;
- (f) Defence Stocktaking policy as detailed in the DI(G) LOG 07-15;
- (g) Environment policy as detailed in Defence Environmental Policy;
- (h) Equal Opportunity for Women in the Workplace policy as detailed in the DPPM, Section 3, Chapter 3.10;
- (i) Fraud Control policy as detailed in DI(G) FIN 12-1;
- (j) Freedom of Information policy as detailed in the DPPM, Section 5, Chapter 5.7;
- (k) Hazardous Substances policy as detailed in the DPPM, Section 3, Chapter 3.10;
- (l) Industry Capability Network policy as detailed in the DPPM, Section 3, Chapter 3.12;
- (m) Information Management policy as detailed in Defence Information Management Policy Instruction No 4/2001 and Defence Information Environment Provision of Defence Email and Internet Services detailed in Defence Information Management Policy Instruction No 5/2001;
- (n) Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM, Section 3, Chapter 3.10; and
- (o) Ozone Depleting Substances policy as detailed in the DPPM, Section 3, Chapter 3.16.

## 35. BUSINESS CONDUCT AND ETHICS

35.1 The Buyer has adopted, and is committed to adherence to, a code of ethical conduct (the **Code of Business Conduct**). The Seller agrees that:

- (a) it will perform its obligations under this Order in compliance with any and all applicable provisions of the Code of Business Conduct;
- (b) the Seller, and its employees and representatives (including suppliers and subcontractors), are committed to adherence to a code of ethical standards;
- (c) the Buyer has provided the Seller with, or with access to, a copy of the Code of Business Conduct, and that the Seller has reviewed the ethical obligations under the Buyer's Code with the Seller's senior management and any subcontractors and that all of them will meet all those obligations; and
- (d) these obligations are in addition to and not intended to limit any obligations of the Seller in any subcontract, purchase order or other written agreement between the parties.

35.2 The Seller is encouraged to inquire in advance of any action, and to make reports regarding any unethical conduct suspected in the performance of this subcontract by reporting such conduct, to the Buyer's

Ethics Helpline (+1 866 825 5483). Copies of the Code of Business Conduct and contacts for such reports are available on the website of the Buyer's parent at <http://www.unitedindustrial.com/> under "*Code of Business Conduct*."

**36. ORDER OF PRECEDENCE**

Except as provided otherwise in a written document executed by the Buyer and the Seller, in the event of any conflict among the provisions of this Order, the following order of precedence shall apply in interpreting this Order:

- (a) provisions required by statute, regulation or Government contract;
- (b) the Purchase Order;
- (c) any specifications or technical requirements for the Contract Products attached to, or referred to in , this Order;
- (d) these Terms and Conditions;
- (e) any other special or supplemental terms and conditions incorporated by reference in the Order;
- (f) other documents attached to or referred to in this Order.

**37. NOTICES**

A notice or other communication required or permitted to be given by a party under this Order must be in writing and sent by registered mail, overnight or same day courier, or by facsimile transmission as follows:

Buyer: Aerosonde Pty Ltd, Unit 1, 585 Blackburn Road, Notting Hill, VIC, 3168 (ph: +61 3 9562 2622 / fax: +61 3 9562 0722)

Seller: in accordance with the contact details specified in the Purchase Order.

A notice or other communication will be taken, for the purposes of this Order, to have been given if:

- (a) couriered, upon delivery;
- (b) mailed, on the expiry of 4 days after the day of posting; or
- (c) sent by facsimile transmission, on the day it is sent (or if that is a Saturday, Sunday or public holiday in Victoria) the next day.

**38. PARTS OBSOLESCENCE**

The Buyer may desire to place additional orders for any parts purchased pursuant to this Order. The Seller must provide the Buyer with Notice of its last opportunity to buy these parts at least twelve (12) months prior to any action to discontinue any parts purchased under the Order.