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General Terms & Conditions

All purchases by the Buyer and the Seller are subject to the following terms and conditions and those on the face of any orders and or quotes. In the event of a conflict the terms on the face of an Order and or Quotes shall have precedence over the provisions in these General Terms and Conditions of Purchase.

- DEFINITIONS:** The following definitions apply unless otherwise specifically stated.
“**Buyer**” – the legal entity which contracts with the Seller.
“**Confidential Information**” – all information disclosed by the Discloser to the Recipient in written or other tangible form and identified as proprietary and/or confidential, using an appropriate legend, marking, stamp or other clear and conspicuous written identification or, if the information is orally or visually disclosed, which is identified as proprietary and/or confidential at the time of disclosure and is reduced to writing clearly identified as proprietary and/or confidential within thirty (30) days after the initial disclosure. Only information in good faith believed to be proprietary and/or confidential by the Discloser shall be identified as such.
“**Seller**” – the legal entity which contracts with the Buyer.
“**Contracts**” – means the contract for the supply of Goods in accordance with the Order.
“**Order**” – a purchase order or the purchase order schedule releases issued by Buyer or any other contract between Buyer and Seller for the purchase by Buyer and sale by Seller of goods or services, including changes thereto.
- ACCEPTANCE:** The Seller’s acknowledgment of an Order, commencement of work on the goods ordered or shipment of such goods, whichever occurs first, shall be deemed Seller’s acceptance of the Order. Any acceptance of the Order is limited to acceptance of the express terms of the Order. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of the Order in Seller’s acceptance is rejected and shall be null and void, but such additional terms shall not operate as a rejection of the Order unless such variances are in the terms of the description, quantity, price, or delivery schedule of the goods. Instead, any such additional terms shall be deemed a material alteration thereof, and the Order shall be deemed accepted by the Seller without said additional or different terms. However, if there is an irreconcilable conflict, the following order of precedence applies: (a) any Supply Agreement, including any supplemental terms included or incorporated by reference in the Supply Agreement, then (b) the terms on the face of an Order, and then (c) these General Terms and Conditions of Purchase.
- PRICES:** The Buyer shall not be required to pay for the goods at prices higher than those specified in the Order. Unless otherwise indicated on the face of the Order or other written agreement, the prices specified in the Order may include all taxes, duties, fees and assessments by any governmental authority. No charge by Seller for extras or for transportation, storage, drayage, insurance, boxing, packing, or crating will be allowed unless specified in the Order or agreed to by the Buyer in writing. The Seller warrants that the prices for the goods sold to the Buyer under the Order are not less favorable than those currently extended to any other customer for comparable or like goods in equal or lesser quantities. In the event Seller reduces its price for such goods during the term of the Order, Seller agrees to reduce the prices under any Order accordingly.
- DELIVERY:** The terms of delivery are as stated in the Order. Time is of the essence and the obligation of Seller to meet the delivery dates, specifications and quantities set forth in the Order is of the essence. Deliveries are to be made both in quantities and at times specified in the Order or if not, such quantities and times are as specified pursuant to Buyer’s written instruction. Shipments in greater or lesser quantities than ordered may be returned at Seller’s expense unless written authorization is issued by Buyer. If Seller’s deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing or charge excess costs including cover and any incidentals incurred thereby to Seller or cancel all or part of the Order. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at Buyer’s option, be returned at Seller’s expense for proper delivery and/or have payment therefore withheld by Buyer until the date that the goods are actually scheduled for delivery unless both parties mutually agree to other recourse.
- RISK OF LOSS:** The Seller shall bear all risk of loss of all goods until such goods are shipped from Seller’s facility, unless specifically indicated to the contrary in the Order.
- INVOICES AND PAYMENT:** Upon shipment of the goods or the performance of services ordered, Seller shall issue an invoice for each such Order containing such information as the Buyer may reasonably request. Invoices shall be paid by the Buyer, net thirty days (30) or greater if agreed upon from the date of invoice receipt, on its next regularly scheduled accounts payable payment date following such net terms.
- MODIFICATION OF ORDER:** No change in terms of the Order shall be binding upon Buyer unless in writing and signed by Buyer’s

authorized purchasing agent. Buyer reserves the right to change the Order at any time by submitting a written change Order or a new Order to Seller. If any such change affects the Seller's cost or time of performance, Seller must submit a written claim for an equitable adjustment within ten (10) days after receipt of notification of change. Seller shall continue its performance under the Order while the parties negotiate an equitable adjustment.

8. **INSPECTION:** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods which are in Buyer's judgment defective. Buyer and/or its customers also reserve the right to verify and inspect work-in-process at Seller's facility during Seller's normal working hours. Goods rejected and goods supplied in excess of quantities called for in the Order may be returned to the Seller at Seller's expense. Buyer may charge the Seller all expenses of unpacking, inspecting, repacking and reshipping such Goods. In the event Buyer receives defective or non-conforming goods, without limiting Buyer's remedies, if directed by Buyer, Seller shall provide replacement goods on an expedited basis at Seller's expense. Delivery of replacement goods shall be accompanied by a written notice specifying that such goods are replacements. If Supplier fails to deliver replacements promptly, Buyer may correct any defective or nonconforming goods at Seller's expense, replace them with goods from another supplier and charge the Seller the cost thereof and any incidental costs.
9. **SPECIFICATIONS:** Unless otherwise directed in the Order, Seller shall manufacture the goods in accordance with the current specifications, drawings and designs for the goods. Seller is responsible for verifying that the Order's specifications, drawings and designs are the current revisions. If Seller determines that any of the specifications, drawings or designs are not the most current revision, Seller shall so notify Buyer immediately in writing.
10. **BUYER-FURNISHED PROPERTY:** Seller shall not use, reproduce, appropriate or disclose to anyone other than Buyer any material, samples, tooling, dies, drawings, designs, specifications, software, technical information and other property or data furnished by Buyer, nor shall Seller use the same to produce or manufacture articles other than those required hereunder without prior written authorization from Buyer. Where the United States Government has received from Buyer the right to authorize such use by Seller, Seller may utilize Buyer's data and information in the manufactured articles for direct sale to the United States Government provided, however, that Seller shall (i) give Buyer prior written notice of each such proposed use, (ii) prominently identify, to the extent possible, each item being provided by Seller for direct sale to the United States Government, and (iii) make no claim against Buyer which arises out of use by Seller of such data and information. Title to such Buyer-furnished property shall be and remain in Buyer at all times. Buyer does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by it. Seller shall bear the risk of loss, damage or destruction of the property furnished by Buyer and shall promptly replace or repair without expense to Buyer any property which is lost, damaged or destroyed, unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence. All Buyer-furnished property, together with spoiled and surplus materials shall be returned to Buyer at termination or completion of the Order unless Buyer shall direct otherwise in writing. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this provision in its subcontracts.
11. **WARRANTIES:** Whether or not Seller is a merchant of goods and services provided by it, Seller warrants that all goods and services provided by it shall (a) be of good quality and workmanship and free from defects, latent or patent, (b) conform to all specifications, drawings and descriptions, furnished, specified or adopted by Buyer or its customers, (c) be merchantable and suitable and sufficient for their intended purpose, (d) be free of any claim of any third party, (e) comply with all applicable laws, (f) be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances, and (g) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third party trade secret information. Services shall be performed in accordance with the highest standards in the industry. The warranty period shall be for a period of one (1) year from the date of delivery to the "End User" unless otherwise agreed upon or such longer period of time as may have been provided by Buyer to its customer or the date on which any longer or broader government requirement covering the goods ends.

In addition to the costs of repairing, replacing or correcting nonconforming goods, Seller is responsible for all related costs, expenses and damages including, but not limited to, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection and retrofit of the nonconforming goods or of Pro-Active Engineering or its customers' affected end-product(s); all freight charges; all customer charges and/or penalties; inventory carrying costs and all corrective action costs (i.e., costs of additional inspection or quality control systems). Unless set off by Buyer, Seller will reimburse Buyer for all such costs upon receipt of Buyer's invoice. None of the remedies available to Buyer for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate agreement specifically designating such limitation and signed by an authorized representative of Buyer. Buyer's inspection and/or acceptance of and payment for goods and services shall not constitute a waiver by it of any warranties. Buyer's approval of any sample or acceptance of any goods shall not relieve Seller from responsibility to deliver goods and to perform service conforming to specifications, drawings and descriptions.

12. **RECALL:**
Seller is liable for all costs or damages associated with any voluntary or involuntary recall of defective or potentially defective goods or any

products containing or incorporating such goods including, but not limited to, recalls by a customer, regulatory agency or in accordance with applicable laws or regulations. Seller will be solely responsible for administering any recall or will fully participate in the administration of any recall conducted by Pro-Active Engineering or its customer in relation to Seller's goods as Buyer may so direct. Each party will cooperate in making available records and other information reasonably required by the other party in connection with any recall. This section will survive any termination or expiration of this Order and apply for at least the same duration as Pro-Active Engineering's obligation to its customer(s).

13. TERMINATION:

If either party is in material default of any of its obligations under the Order and such default is not cured within thirty (30) days after written notice thereof by the party not in default, then such non-defaulting party may terminate this Agreement and/or any Orders, in whole or in part, provided, however, that in the event of Seller's failure to meet the delivery schedule or quality requirements of Buyer, Seller shall be given the opportunity to cure a default only once and thereafter Buyer may terminate any Order, in whole or in part, immediately by written notice to Buyer. In the event that the Buyer disputes the basis for the Seller's termination, the Seller shall continue its performance under this Agreement and any Orders until the dispute is finally resolved. The Buyer may, at any time, terminate any Order for convenience and without cause, in whole or in part, upon written notice to Seller. Seller shall submit any claim for termination costs in writing within thirty (30) days of receipt of the notice together with documentation to substantiate such costs satisfactory to the Buyer. Notwithstanding the foregoing, no termination charges shall apply if the goods are not custom goods (i.e. goods unique to the Buyer) specially manufactured to the Buyer's specifications pursuant to an Order, and notice of termination is provided to the Seller at least thirty (30) days prior to the required delivery date.

14. CONFIDENTIALITY: All information relating to the Buyer and all information disclosed by the Buyer to Seller shall be considered "Confidential Information" unless the Seller can prove by written documentation that such information (i) is or becomes part of the public domain through no act, omission or fault of the Seller, or (ii) is disclosed to the Seller after receipt thereof from the Buyer by a person other than the Buyer, the Buyer's customers or any of their affiliates, that has the right to disclose such information to the Seller without restriction. The Seller shall hold all Confidential Information in confidence, shall not disclose the Confidential Information to any other person, shall not use the Confidential Information commercially for its own benefit or the benefit of anyone except the Buyer, and shall not use the Confidential Information for the purpose of developing, improving, marketing or commercializing a product or method for anyone except the Buyer. The Seller agrees not to copy or otherwise reproduce any Confidential Information without the Buyer's prior written consent. All Confidential Information and all reproductions, copies and embodiments thereof, in whole or in part, shall be the sole property of the Buyer. Nothing in this Order shall be deemed, by implication or otherwise, to convey to the Seller any rights under any patents, patent applications, copyrights, trademarks, trade secrets, inventions or any other intellectual property owned by the Buyer, and the Buyer makes no representation or warranty as to the accuracy or completeness of any Confidential Information. If the Parties have signed a separate Confidentiality Agreement and/or Non-Disclosure Agreement, the provisions of such agreement replace entirely this section.

15. RELEASE OF INFORMATION: Seller shall not advertise, publish or otherwise release any information relating to the Order, including the fact that Buyer has issued the Order, without Buyer's prior written permission.

16. COUNTERFEIT PARTS PREVENTION:

- (a) For purposes of this Agreement, (i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented, including, but not limited to, (i) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (ii) defective parts and/or surplus material scrapped by the original manufacturer, and (iii) previously used parts pulled or reclaimed and provided as "new", (ii) "authentic" shall mean (A) genuine, (B) from the legitimate source claimed or implied by the marking and design of the product offered, and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material, and (iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers. Suppliers are required to purchase from OEM or authorized distribution as sole and exclusive sources for all parts to be delivered to Pro-Active Engineering and to obtain and retain written records for such. Suppliers shall secure a certificate of compliance for all parts to provide to Pro-Active Engineering upon request and maintain on file as described within applicable purchase orders and in compliance with AS9100 and/or ISO9001 requirements.
- (b) Seller represents and warrants that only new and authentic materials are used in Goods required to be delivered to Buyer and that the Goods delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs") or through the OEM's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, OEM documentation that authenticates traceability of the components to that applicable OEM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by the Buyer. Seller must present complete and compelling support for its request and include in its

request all actions to ensure the parts/components thus procured are legitimate parts.

- (c) In the event that Goods delivered under this Contract constitutes or includes Counterfeit Goods, Seller shall, at its expense, promptly replace such Counterfeit Goods with genuine Goods conforming to the requirements of this Agreement. Notwithstanding any other provision in this Agreement, Seller shall be liable and indemnify Buyer for all costs relating to the removal and replacement of Counterfeit Goods, including without limitation Buyer's and higher tier customer's costs of removing Counterfeit Goods of installing replacement materials and of any testing necessitated by the reinstallation of Goods after Counterfeit Goods have been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Agreement.

17. **RIGHTS IN INTELLECTUAL PROPERTY:** If the Order provides for Seller to perform any design, engineering, analytical or similar work for Buyer or provides for the delivery of any software, firmware, copyrightable materials or derivative works thereof, all right, title and interest that Seller has in and to any patentable invention, know-how and trade secrets, copyrightable materials and derivative works thereof that Seller shall conceive, originate or reduce to practice, either individually or jointly with others, in connection with its performance of an Order are hereby assigned to Buyer and shall be the sole and exclusive property of Buyer. Seller shall promptly execute any documents and perform any other tasks required by Buyer that are reasonably necessary to perfect Buyer's ownership of any intellectual property rights therein.
18. **INTELLECTUAL PROPERTY INDEMNIFICATION:** For goods provided under an Order, Seller will, at its expense, defend and indemnify Indemnitee from and against any and all loss, cost, expense, damage, claim, demand, or liability, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict incurred by or demanded from Indemnitee arising out of, resulting from, or occurring in connection with any alleged: (a) patent, copyright, or trademark infringement; (b) unlawful disclosure, use, or misappropriation of a trade secret; or (c) violation of any other third-party intellectual property right, and from expenses incurred by Indemnitee in defense of such suit, claim, or proceeding if Seller does not undertake the defense thereof. Seller will have the right to conduct the defense of any such claim or action and, consistent with Indemnitee's rights hereunder, all negotiations for its settlement. But in no event will Seller enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld. Indemnitee may participate in a defense or negotiations to protect its interests. If any injunction or restraining order is issued, Seller will, at its expense, obtain for Indemnitee either the right to continue using and selling the goods or replace or modify the goods to make them non-infringing.

In the event that Buyer does not submit payment for all invoices due within one year, Buyer forfeits its rights to its intellectual property in order to offset the losses suffered by Seller.

19. **INDEMNIFICATION AND INSURANCE:** Seller will, at its expense, defend and indemnify Pro-Active Engineering and its subsidiaries, affiliates, and agents, and their respective officers, directors, shareholders, and employees, and Pro-Active Engineering's customers (collectively "Indemnitee(s)") from and against any and all loss, cost, expense, damage, liquidated damages, claim, demand, or liability, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict (collectively, "Damages") incurred by or demanded of an Indemnitee arising out of, resulting from or occurring in connection with Seller's Goods or services or Seller's negligence. In no event will Seller enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld. If Buyer is obligated to pay Damages pursuant to its contract with a customer, then Seller will be liable for such Damages to the extent Seller causes or contributes to those Damages. Nothing in this section limits Buyer's right to claim all actual damages sustained by Buyer as a result of Seller-caused delays. Seller shall maintain such public liability insurance, including products liability and aircraft products liability, completed operations, contractors liability, automobile liability insurance (including non-owned automobile liability) and worker's compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorneys' fees), Seller agrees to submit certificate of insurance, evidencing its insurance coverage when requested by Buyer.
20. **EXPORT/IMPORT CONTROLS:** If Seller is a U. S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the U. S. Department of State Directorate of Defense Trade Controls and has complied and will comply with its obligations under export control laws and regulations, including, but not limited to, the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). Seller shall control the disclosure of and access to technical data, information and other items received under the Order in accordance with U. S. export control laws and regulations, including, but not limited to, the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with the Order shall be provided to any foreign subsidiary of Seller or any other foreign person, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. Seller shall defend and indemnify Buyer from any

loss, damage, fine, penalty, or expense (including attorneys' fees) that Buyer may suffer as a result of Seller's failure to comply with this section.

21. **APPLICABLE LAW AND FORUM:** This Agreement shall be governed and construed in accordance with the laws of the state of, Wisconsin not including its law of conflicts of laws. Any legal action relating to or arising out of this Agreement, any Order or the transactions contemplated thereby, shall be brought in the United States District Court or the state courts located in Wisconsin, and the Parties hereby consent to the sole jurisdiction of said courts.