

HARTWELL CORPORATION
GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Scope

These Terms and Conditions are applicable to all purchases made by Hartwell Corporation and any entity controlling, controlled by, or under common control with it ("Hartwell"), from the supplier indicated on the purchase order (the "Supplier") whether for tooling, machines, parts, raw materials, or other goods or services (hereinafter individually or collectively called the "Supply").

Unless these Terms and Conditions are issued in connection with a written supply agreement between Hartwell and Supplier, they shall constitute the only agreement applicable to all purchases of Supply by Hartwell and expressly exclude the application of the Supplier's general terms of sale as well as any documents now or in the future issued by Supplier in relation to the purchase order or the Supply. These Terms and Conditions may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of Hartwell. No course of dealing or usage of trade shall be applicable unless expressly incorporated in a written agreement. Supplier's written acknowledgment, commencement of work on the Supply, or shipment of the Supply, whichever occurs first, shall be deemed an effective mode of acceptance of these terms. Any acceptance by Supplier is limited to acceptance of the express terms set forth in this document. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this offer is hereby objected to and rejected. Any such proposal shall not operate as a rejection of this offer unless the variances are in the terms of the description, quantity, price or delivery schedule of the Supply, but shall be deemed a material alteration. Accordingly, this offer shall be deemed accepted by Supplier without such additional or different terms. If these Terms and Conditions shall be deemed an acceptance of a prior offer by Supplier, the acceptance is expressly made conditional on assent to the additional or different terms and such acceptance is limited to the express terms set forth herein.

2. Quality System

Supplier's quality systems shall strictly adhere to Hartwell's requirements.

3. Industrial and Intellectual Property Rights

3.1 Supplier shall confirm the validity of its industrial and/or intellectual property rights related to the manufacture and sale of the Supply and shall specifically identify in writing to Hartwell any patented components or processes, tooling, machines or equipment used in its manufacture.

3.2 Supplier authorizes Hartwell to finalize and produce the Supply, including any tooling or equipment, upon a breach by Supplier of these Terms and Conditions or the purchase order, even if the Supplier's intellectual and/or industrial property rights are used for the design and manufacture of tooling or equipment. Supplier shall provide to Hartwell all information necessary for the manufacture of the tooling or equipment upon such breach and grants to Hartwell a royalty free license on the intellectual or industrial property rights in order to finalize or produce the Supply.

4. Delivery

4.1 Time and quantity are of the essence. Unless otherwise specified on the purchase order, delivery shall be at the Hartwell facility indicated on the purchase order, or as specified by the Hartwell facility where the delivery is to be made. Delivery terms may be modified from time to time.

4.2 Supplier shall take all measures necessary to meet the delivery date for the Supply and comply with all technical, administrative and shipping documents.

4.3 No shipments earlier than 21 days before the line item due date will be accepted by Hartwell unless otherwise stated on the purchase order. Supplier shall bear all costs related to any unauthorized advance delivery, including return shipping costs.

4.4 In the event of late delivery, all damages suffered by Hartwell and any transportation or other costs incurred by Hartwell to meet the specified delivery schedule will be paid by Supplier. Supplier will be responsible for any extraordinary cost incurred by Hartwell from its customer due to late delivery of the Supply by Supplier. Hartwell may apply late delivery penalties as specified in the purchase order. In the event of late delivery, Hartwell may purchase the Supply from a third party immediately without notice. Any extra cost arising from this replacement order shall be borne by the defaulting Supplier.

4.5 Supplier shall notify Hartwell immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of the purchase order, and provide all relevant information. Supplier shall notify Hartwell six (6) months in advance of the expiration of any current labor contract(s). Prior to the expiration of any such labor contract, Supplier will store, at its expense, a minimum thirty (30) day inventory of finished Supply at a warehouse unaffected by the labor contract.

5. Price, Invoicing and Conditions of Payment

5.1 All prices shall be as stated in the purchase order. Supplier shall be solely responsible for all transport and unloading costs, customs charges, taxes and insurance costs, unless otherwise specified on the purchase order.

5.2 The invoice shall include all information appearing on the purchase order necessary for identification and control of the Supply. The invoice shall be sent to the invoicing address written on the face of the purchase order. Upon Hartwell's request, Supplier shall invoice Hartwell electronically.

5.3 No payment shall be made by Hartwell in advance of receipt of the Supply. Unless otherwise stated on the purchase order, the invoice shall be payable net **[45]** days after Hartwell receives Supplier's invoice.

5.4 In addition to any right of setoff provided by law, Hartwell may automatically deduct from payments made to Supplier any and all sums due or to become due from Supplier for whatever reason.

5.5 Supplier shall not assign any accounts receivable from Hartwell to third parties without Hartwell's prior written approval.

5.6 Supplier warrants that the prices for the Supply sold to Hartwell are no less favorable than those Supplier currently extends to any other customer for the same or similar Supply in similar quantities. If Supplier reduces its prices to third parties during the term of the purchase order for the Supply, Supplier will correspondingly reduce the prices charged to Hartwell. Supplier warrants that the prices on the purchase order are complete and that no other charges will be added without Hartwell's written consent.

6. Packaging and Delivery Documents

6.1 The Supply shall be packed in accordance with Hartwell's purchasing and packaging specifications or purchase orders, and also in accordance with the norms and standards of common carriers in the United States, unless otherwise requested by Hartwell. Hartwell shall have the right at any time to change any purchase order as to specifications, delivery, packaging or means of shipment. Supplier will provide all necessary Material Safety Data Sheets and ensure that all hazardous material fully meets federal, state and local shipping requirements. Supplier warrants that the Supply supplied under any purchase order does not contain any substance whose use is prohibited under Federal, State, or local law, and that any applicable requirements under these laws have been satisfied by Supplier. Supplier shall be responsible for any damage to the Supply arising from packaging.

6.2 The exterior of each unit of packaging shall bear in a conspicuous and legible manner the markings required under federal and state regulations in force in the United States, any special conditions for storage, the Hartwell purchase order number, a description of the Supply, the quantity delivered and the gross or net weight.

6.3 Supplier shall attach to the shipment a bill of lading consisting of a detailed delivery order together with the information appearing on the purchase order necessary to identify the Supply and to facilitate quantitative control.

6.4 Delivery documents and Supplier invoicing must provide a clear description of the origin of all goods sufficient to permit Hartwell to so declare in any official document.

7. Acceptance of Supply

7.1 Hartwell may inspect the Supply during any stage of its manufacture, construction, preparation, delivery or completion. Hartwell and Hartwell's customers shall have the right to enter onto Supplier's premises at reasonable times to verify that the materials covered by a purchase order conform to all specified requirements and Supplier agrees to provide all supporting documentation requested by Hartwell or Hartwell's customers in the course of such investigation. At Hartwell's request, Supplier shall submit production and quality test reports and related data. Final acceptance shall not be conclusive with respect to latent defects or misrepresentations. Nothing in this Article 7 shall relieve Supplier from the obligation of testing, inspection and quality control.

7.2 Hartwell reserves the right to reject or revoke acceptance of a non-conforming Supply, which includes but is not limited to: defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items previously may have been accepted; non compliance with the purchase order; or non compliance with the date and hours of delivery.

7.3 Notwithstanding payment or prior inspection, if any of the Supply and/or services are found to be defective in material or workmanship or otherwise not in conformity, in addition to any other remedies it may have, at its option, Hartwell may correct or have corrected the non-conformity at Supplier's expense or reject and return the Supply and discontinue the services at Supplier's own risk and expense.

Alternatively, at Hartwell's instruction, Supplier shall retrieve the non-conforming Supply at its expense within eight (8) days of notification of rejection or revocation of

acceptance. Hartwell will be permitted to dispose of the Supply upon Supplier's failure to retrieve the non-conforming Supply.

Supplier shall be liable for all costs (including scrap, storage, sorting out, alterations, tool breaks, breakdowns, production stoppage, recall campaigns and administrative costs) incurred by Hartwell as a result of non-conformity of the Supply.

In the event of delivery of non-conforming Supply, Hartwell may terminate the purchase order pursuant to Article 12 below and/or purchase the Supply from a third party. Supplier shall be responsible for any additional cost incurred by Hartwell under this paragraph.

7.4 Supplier shall be responsible for the design and/or manufacture of the Supply to the extent designated in the purchase order or as agreed to in writing, regardless of any assistance provided by Hartwell throughout the development phase or approval by Hartwell during initial sample review.

7.5 If Hartwell or its customer recalls the Supply or a product incorporating the Supply, Supplier shall reimburse Hartwell, in proportion to Supplier's responsibility, for actual expenses borne by Hartwell.

8. Express Warranty. With respect to the Supply or services purchased under these Terms and Conditions and all other goods or services purchased from Supplier, Supplier expressly warrants for the Warranty Period as follows: (a) the Supply shall strictly conform to all specifications, drawings, instructions, statements on containers or labels, descriptions and samples; (b) the Supply shall be free from defects in workmanship and material and shall be new and of the highest quality; (c) Hartwell shall receive title to the Supply that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the Supply shall be merchantable, safe and fit for Hartwell's intended purposes, which purposes have been communicated to Supplier; (e) the Supply shall be adequately contained, packaged, marked and labeled; (f) all services performed by Supplier shall be performed in a competent, workmanlike manner and in strict accordance with industry standards; and (g) the Supply shall be manufactured in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification, in the United States or in the country of manufacture and sale, including by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, the EEOC, and any law or order pertaining to discrimination. These warranties shall be in addition to all other warranties afforded to Hartwell by operation of law, by industry standards or by custom. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Hartwell and shall inure to the benefit of Hartwell, its successors, assigns, customers and the end-users of Hartwell's products. These warranties may not be limited or disclaimed by Supplier. Hartwell's approval of Supplier's design, material, process, drawing, specifications or the like shall not be construed to relieve Supplier of strict compliance with the warranties set forth herein, nor shall a waiver by Hartwell of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Hartwell in writing. "Warranty Period" shall be the longer of the following time periods: (a) 24 months from the date of first use of the Supply by Hartwell or acceptance by Hartwell, whichever occurs later; or (b) if the Supply is incorporated, in whole or in part, into products sold by Hartwell to third parties, the latter of the following dates: (i) 18 months after acceptance by such third parties or (ii) the time period of warranty that such third parties give to their customers.

9. Risk of Loss

Risk of loss with respect to the Supply delivered shall not be transferred to Hartwell until actual receipt of the Supply by Hartwell at the address indicated on the purchase order.

10. Confidentiality

All information provided to Supplier by Hartwell under this purchase order and for the Supply not publicly available shall remain Hartwell's property and be considered confidential by Supplier. Supplier shall take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors communicate such confidential information to any third party without Hartwell's prior written consent and that the information is used only for the purpose submitted.

Any information Supplier discloses to Hartwell with respect to the design, manufacture, sale, or use of the items covered by this purchase order shall be deemed to have been disclosed as part of the consideration for this purchase order, and Supplier shall not assert any claim against Hartwell by reason of Hartwell's use of such information.

Without obtaining the prior written consent of Hartwell, Supplier shall not advertise or publish the fact that Supplier has contracted to furnish Hartwell goods or services, or use any trademarks or trade names of Hartwell.

These confidentiality requirements shall be maintained for the duration of performance under the purchase order and for a period of five (5) years thereafter.

Immediately upon completion of performance of the purchase order, any termination of the purchase order or upon the request of Hartwell, Supplier agrees to return to Hartwell all information, including all copies thereof, confidential or otherwise, related to the purchase order.

In the event of Supplier's breach of this provision, Hartwell shall have the right, among all other remedies, to cancel the undelivered portion of any Supply or services covered by this purchase order and shall not be required to make further payments except for conforming Supply delivered or services rendered prior to cancellation.

11. Ownership

11.1 Notwithstanding Article 9 above, ownership of the Supply shall be transferred to Hartwell immediately upon its identification to the purchase order on the premises of Supplier. Supplier agrees to acknowledge and defend Hartwell's property interests at all times.

11.2 Supplier shall not impose nor permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supply.

11.3 If Hartwell finances all or part of the raw materials or semi-finished products to be procured by Supplier for incorporation into the Supply, the raw materials and semi-finished products will become the property of Hartwell immediately upon payment. Supplier, as bailee, will identify the raw materials and semi-finished products by plainly marking Hartwell's ownership.

11.4 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products and other items ("Tools") purchased by or furnished by Hartwell or by third-parties on Hartwell's behalf to Supplier to perform hereunder, or for which Supplier has been reimbursed by Hartwell, shall be and remain the property of Hartwell and shall be neither withheld by Supplier nor pledged to any third party. Supplier shall provide Hartwell with equipment and tooling drawings, technical specifications, FMEA's and control plans for each component and for the purchase of capital equipment. Supplier shall bear the risk of loss of and damage to Hartwell's property. Hartwell's property (a) shall at all times be properly housed and maintained by Supplier, (b) shall not be used by Supplier for any purpose other than the performance of this agreement, (c) shall be deemed to be personal property, not a fixture, (d) shall be conspicuously identified as property of Hartwell with specific reference to Hartwell's identity and relevant part numbers, (e) shall not be commingled with other property of Supplier or with that of a third party, and (f) shall not be moved from Supplier's premises without Hartwell's prior written approval. Upon the request of Hartwell, such property immediately shall be released to Hartwell or delivered to Hartwell by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the requirements of the carrier selected by Hartwell to transport such property, or (b) to any location designated by Hartwell, in which event Hartwell shall pay Supplier the reasonable cost of delivering such property to such location. Hartwell shall have the right to enter onto Supplier's premises at all reasonable times to inspect such property and Supplier's records with respect to the property. Unless otherwise agreed in writing by Hartwell, Supplier at its own expense shall furnish, maintain, keep in good condition, and replace when necessary the Tools. Supplier shall insure the Tools with full fire and extended coverage insurance for replacement value. Hartwell does not guarantee the accuracy of any tooling or dies or the availability or suitability of any supplies or material furnished by Hartwell to Supplier. Supplier agrees carefully to check and approve all tooling, dies or materials supplied by Hartwell prior to use. Supplier shall assume all risk of death or injury to persons or damage to property arising from use of the Tools or other materials supplied by Hartwell.

12. Termination

A. Hartwell may terminate any purchase order for cause in the event of any default by Supplier. The following are causes of default, among others, allowing Hartwell to terminate: (i) late delivery, (ii) delivery of Supply that is defective or non-conforming, or (iii) failure upon request to provide Hartwell with reasonable assurances of future performance. Additionally, Hartwell may immediately cancel any purchase order in the event of any of the following: (i) insolvency of Supplier; (ii) filing of an involuntary or voluntary petition of bankruptcy against Supplier; (iii) execution by Supplier of an assignment for the benefit of creditors; or (iv) appointment of a receiver over Supplier's assets. In the event of termination for cause, Hartwell shall not be liable to Supplier for any amount, and Supplier shall be liable to Hartwell for all damages sustained by reason of the default which gave rise to the termination.

B. Hartwell reserves the right to terminate any purchase order for its sole convenience, without reason or cause. In the event of such termination, Supplier immediately shall stop all work, and shall forthwith cause all of its suppliers and subcontractors to cease work. Upon approval by Hartwell, Supplier shall be paid a reasonable termination charge consisting solely of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. Within thirty (30) days after receipt of a termination notice, Supplier shall submit its claim. Hartwell reserves the right to verify the claim by auditing all relevant records. Supplier shall not be paid for any work performed after receipt of the notice of termination, nor for any costs incurred by Supplier's suppliers or subcontractors

which Supplier could reasonably have avoided. In no event shall Hartwell be liable for loss of profits or cancellation charges.

13. Applicable Law and Jurisdiction

These Terms and Conditions of Purchase shall be governed by the laws of the State of California without regard to rules pertaining to conflicts of law. The federal, state and local courts located in the State of California shall have exclusive jurisdiction of any disputes relating to these Terms and Conditions of Purchase. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions of Purchase or any transaction pursuant hereto.

If any provision herein is or becomes invalid or unenforceable under any law of mandatory application, such provision will be deemed severed and omitted. The remaining provisions will remain in full force and effect as written.

No action or inaction taken pursuant to these Terms and Conditions shall constitute a waiver of compliance with any covenants or agreements herein.

14. Changes. Hartwell may at any time, by a written order, make changes in any one or more of the following: (i) drawings, designs or specifications, where the items to be furnished are to be specially manufactured for Hartwell in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery or acceptance; and (iv) the amount of any Hartwell furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of this purchase order, an equitable adjustment shall be made in the price or delivery schedule or both. No claim by Supplier for adjustment hereunder shall be allowed unless made in writing within thirty (30) days from the date notice of any such change is received by Supplier. Where the cost of property rendered obsolete or excess as the result of a change is included in Supplier's claim for adjustment, Hartwell will have the right to take title thereto and prescribe the manner of disposition thereof. Nothing in this clause shall excuse Supplier from proceeding with performance of a purchase order as changed. Price increases or extensions of delivery times shall not be binding on Hartwell unless evidenced by a Purchase Order Change Notice issued and signed by Hartwell.

15. Indemnification and Insurance.

A. To the fullest extent permitted by law, Supplier agrees to indemnify, save harmless and defend Hartwell and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney's fees and any other cost of litigation ("Liabilities") arising out of a breach of these Terms and Conditions, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by any act or omission of Supplier, its employees, agents, subcontractors, or in any way attributable to the performance of Supplier, including without limitation, breach of contract, breach of warranty or product liability, or any failure of Supplier to comply with any applicable governmental laws, regulations, or standards; provided, however, that Supplier's obligation to indemnify Hartwell shall not apply to any liabilities arising from Hartwell's sole negligence.

B. Supplier shall indemnify, save harmless and defend Indemnitees from and against all Liabilities arising out of actual or alleged infringement or wrongful use of any patent, trademark, copyright, trade secret or other intellectual property right of any third party relative to the Supply or by reason of the sale or use of any items, including software and data, furnished hereunder except those items for which Hartwell furnished complete specifications. If the use or sale of any item with respect to which Supplier indemnifies Hartwell is enjoined as a result of such action or proceeding, Supplier, at no expense to Hartwell, shall obtain for Hartwell and its customers, the right to use and sell said items or shall substitute an equivalent item acceptable to Hartwell, and sell said item or shall substitute an equivalent item acceptable to Hartwell, shall reimburse Hartwell for any costs associated with the substitution of such equivalent item for said item, and extend this patent, trademark and copyright indemnity with respect to such equivalent item. In the event that Supplier is unable to secure such right of use for Hartwell or its customers or to secure an equivalent item as a substitute, Supplier will indemnify Hartwell and its customers for any and all losses or damages sustained by reason of such injunction.

If Supplier or a third party asserts a claim against Hartwell for an alleged infringement of intellectual or industrial property rights, Hartwell may immediately terminate all purchase orders in progress by written notice, without prejudice to Hartwell's rights or any legal action Hartwell may take against Supplier.

C. Supplier shall maintain insurance coverage in amounts not less than the following: (a) Worker's Compensation – Statutory Limits for the state or states in which this agreement is to be performed (or evidence of authority to self-insure); (b) Employer's Liability – \$1,000,000 for Bodily Injury by Accident per Accident, \$1,000,000 for Bodily Injury by Disease per policy limit, and \$1,000,000 for Bodily Injury by Disease, per employee; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) – \$1,000,000 combined bodily injury and property damage per occurrence; (d) Automobile Liability (including owned, non-owned and hired vehicles) – \$1,000,000 combined bodily injury/property damage per occurrence; and (e) Commercial Umbrella limits in the

amount of \$5,000,000 per occurrence and \$10,000,000 annual aggregate. At Hartwell's request, Supplier shall furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Supplier which shall name Hartwell (and its parent and subsidiaries) as an additional insured. Such certificates shall provide that Hartwell will receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's insurance carrier shall be rated a minimum of "A-" or better under the AM Best rating. Supplier's insurance shall be primary and must offer a blanket waiver of subrogation endorsement.

Supplier's purchase of insurance coverage and the furnishing of certificates of insurance shall not release Supplier of its obligations or liabilities under these Terms and Conditions. In the event of Supplier's breach of this provision, Hartwell shall have the right to cancel the undelivered portion of any Supply or services covered by this agreement and shall not be required to make further payments except for conforming Supply delivered or services rendered prior to cancellation.

16. Ingredients Disclosure.

If requested by Hartwell, Supplier shall promptly furnish to Hartwell in such form and detail as Hartwell may direct: (a) a list of all ingredients in the Supply purchased; (b) the amount of one or more ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the Supply purchased, Supplier agrees to furnish to Hartwell sufficient warning and notice in writing (including appropriate placarding and labels on Supply, containers, packing and vehicles used for shipment) of any "hazardous substance" which is an ingredient or a part of any of the Supply, together with such special handling instructions as may be necessary to advise Hartwell and third parties, including transportation carriers and Hartwell's employees, as to the degree of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use, recycling or disposal of the Supply.

17. Work on Premises. If Supplier's work under this purchase order involves operations by Supplier on the premises of Hartwell or one of its customers, Supplier shall take all necessary precautions to prevent injury to any person or property during the progress of such work. Supplier shall maintain such public liability, property damage and employee's liability and compensation insurance as will protect Hartwell from said risk and from any claims under applicable worker's compensation and occupational disease acts, in addition to the insurance provisions as set forth in Article 15(C). Supplier agrees that, in performing this order, Supplier's performance will be consistent and in accordance with current labor agreements between Hartwell and any union organization with which Hartwell may have a collective bargaining agreement. Supplier agrees to indemnify and hold Hartwell harmless in the event such performance breaches or is in violation of such labor agreement.

18. Miscellaneous Provisions.

A. **Assignment.** This purchase order is entered into in reliance upon Supplier's personal performance of the duties imposed. Supplier agrees not to, in whole or in part, assign this purchase order or delegate the performance of its duties without the written consent of Hartwell. Any such assignment or delegation without the previous written consent of Hartwell, at the option of Hartwell, shall effect a cancellation of the purchase order. Any consent by Hartwell to an assignment shall not be deemed to waive Hartwell's right to recoupment from Supplier and/or its assigns for any claim arising out of this purchase order. If Hartwell agrees to the assignment of the purchase order, in whole or in part, Supplier shall remain solely liable to Hartwell for the adherence of the assignee to these Terms and Conditions.

B. **Force Majeure.** Any delay or failure of either party to perform its obligations shall be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, Hartwell, at its option, may purchase Supply from other sources and reduce its schedules to Supplier by such quantities, without liability to Hartwell, or cause Supplier to procure the Supply from other sources in quantities and at times requested by Hartwell and at the prices set forth in the purchase order. If requested by Hartwell, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Hartwell deems appropriate. If the delay lasts more than the time period specified by Hartwell, or Supplier does not provide adequate assurance that the delay will cease within such time period, Hartwell may, among its other remedies, immediately cancel this agreement and seek damages against Supplier for its non-performance.

C. **Limitation on Hartwell's Liability.** In no event shall Hartwell be liable to Supplier for anticipated profits or for incidental or consequential damages. Hartwell's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from this purchase order, or from any performance or breach, shall in no case exceed the price allocable to the Supply or services or unit which directly gives rise to the claim.

D. **Inventions.** If a purchase order involves developmental or research activities, including engineering or design services, all information developed in the course thereof shall be owned by Hartwell and be deemed confidential and proprietary

property of Hartwell, whether patented or not, and Supplier shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent or otherwise perfect or protect for the benefit of Hartwell any inventions conceived, developed or reduced to practice in performance of this agreement. If a purchase order does not involve developmental or research activities, but the Supply covered by it are to be produced in accordance with drawings or specifications furnished by Hartwell, Supplier hereby grants to Hartwell an irrevocable, non-exclusive and royalty-free license to make, have made, use and sell any improvement in the Supply which is conceived, developed or reduced to practice by Supplier in the production of the Supply under this agreement. Any software development purchased by Hartwell shall include the full supply by Supplier of source code and proper documentation, and the grant by Supplier of full intellectual property and unlimited license of use of final product and attached documentation to Hartwell.

E. Relationship of Parties. Supplier and Hartwell are independent contracting parties and nothing herein shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

19. Renegotiation Act

A. To the extent required by law, this purchase order is subject to the Renegotiation Act of 1951 (P.L.9.82.nd Congress) and shall be deemed to contain all provisions required by Section 104 of said Act.

B. The Supplier agrees to insert provisions of this clause, including this paragraph (b) in all subcontracts as required by Section 104 of the Renegotiation Act of 1951; provided, that the Supplier shall not be required to insert the provision of this clause in any subcontract of a class or type described in Section 106 a) of the Renegotiation Act of 1951.

C. Nothing contained in this clause shall impose any renegotiation obligation with respect to this order or any subcontract hereunder, which is not imposed by an act of the Congress, heretofore or hereafter enacted.

19. Government Contract Provisions

When the materials, articles, or services covered hereby are purchased or procured for use for, or in the performance of a contract or contracts with the United States of America (hereinafter called "Government Contract") or a subcontract under a Government Contract, in addition to the above provisions, the applicable provisions of Government Procurement Regulations as in effect at the date of this order, and the following additional provisions shall apply.

A. This order is assignable by Hartwell to the United States of America. The acceptance of this order shall constitute a representation and guaranty by Supplier of compliance with applicable Federal, State, and local laws, regulations, orders, and proclamations now or hereafter in effect relating to materials, articles, or services purchased or procured hereunder.

B. Supplier shall afford to Hartwell or to its duly authorized employees or agents, and/or Government inspectors, full opportunity to observe production and to inspect and test articles, materials, and services during performance of this contract. Supplier shall furnish facilities for making such reasonable tests upon his premises as Hartwell and/or Government inspectors may deem necessary. All inspections and tests shall be performed in such manner as not to delay the work unduly. On request, Supplier shall furnish details of the progress of production from time to time, Supplier shall require any subcontractor to afford similar opportunity for observation and testing on any part of the handled by it.

C. The following clauses, as amended and supplemented, are hereby incorporated by reference with the same force and effect as though set forth herein at length, except that "Hartwell" shall be deemed substituted for "Government" and for "Contracting Officer" and "Supplier" shall be deemed substituted for "Contractor" wherever said words appear in said clause other than the clauses entitled Filing of Patent Application (ASPR9-104) and Copyrights (ASPR9-202) in which "Hartwell" shall not be so substituted: Buy American Act (ASPR7-103.14); Officials Not to Benefit (ASPR7-103.19); Covenant Against Contingent Fees (ASPR7-103.20); Employment of Aliens (ASPR7-104.3, applicable only to orders for aircraft parts or aeronautical accessories); Vinson-Trammell Act (ASPR7-104.11); Military Security Requirements (ASPR7-104.12); Gratuities (ASPR7-104.16); Notice of Shipments (ASPR7-105.4); Notice and Assistance (ASPR9-102); Reporting of Royalties (ASPR9.103); Filing Applications (ASPR9-104); Patent indemnification of Government by Contractor (ASPR—105, applicable only to orders in excess of \$5,000 for Supplier's standard commercial articles); Patent Rights (ASPR9-107.1, applicable only to orders of \$3,000 or more for experimental, development or research work); Copyrights (ASPR12-403.1 (1)); Copeland Act (ASPR12-403.1 (5)); Walsh-Healy Public Contracts Act (ASPR12-803); Nondiscrimination in Employment (ASPR12-804); ASPR7-103.13 "RENEGOTIATION".

D. Supplier shall comply with applicable conditions of Merchant Marine Act 1936, Sec.505 (b).

E. Hartwell may terminate this purchase order in whole or in part in accordance with the provisions of the suggested Subcontract Termination Clause (ASPR8-706) which

is incorporated herein by reference with the same force and effect as though herein set forth in full.

F. Unless this order does not exceed \$1,000 (a) Supplier agrees that representatives of the Government including the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment of this order, have access to and the right to examine any directly pertinent books, documents, papers, and records of Supplier involving transactions relating to this order. (b) Supplier further agrees to include in all its subcontracts in excess of \$1,000 hereunder a provision to the effect that subcontractors agree that representatives of the Government including the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractors involving transactions relating to the subcontracts.

G. A Certification of Non-segregated Facilities, as required by the May 9, 1967, order on Elimination of Non-segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award of a purchase order or subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

H. Sec. 202 of Executive order 11246 as amended is incorporated herein by specific reference.