

1. DEFINITIONS.

- 1.1 "Buyer" means the person, firm, organization, governmental entity, or corporation by whom the Goods and/or Services (as defined below) are provided by.
- 1.2 "Goods" means the goods, articles, products, data, and tangibles supplied to Buyer by WSU.
- 1.3 "Order" means these Terms and Conditions, Purchase Order and Quote.
- 1.4 "Quote" means a written quotation, bid, or proposal for Goods and/or Services provided to Buyer from WSU.
- 1.5 "Purchase Order" means the order or request for Quote or for Goods and/or Services issued from Buyer to WSU.
- 1.6 "Services" mean any and all collaboration, design, research, testing, engineering, and other related services provided by Wichita State University's National Institute for Aviation Research to Buyer.
- 1.7 "Terms and Conditions" mean these Standard Terms and Conditions.
- 1.8 "WSU" means Wichita State University and its National Institute for Aviation Research.

2. CONSENT AND FORMATION OF CONTRACT.

These Terms and Conditions shall apply to all Goods and Services. All Buyer orders must be in writing and are accepted subject to these Terms and Conditions. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in the Quote, nor otherwise expressly agreed in writing by WSU, shall be binding on WSU. These Terms and Conditions supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits WSU's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Buyer's general terms and conditions of sale or any other document issued by Buyer in connection with this Order. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in the Order, nor otherwise expressly agreed in writing by WSU, shall be binding on WSU.

3. VALIDITY OF QUOTE AND PRICES.

- 3.1 The price of the Goods shall be established in the Quote and deemed confirmed and/or amended by the Purchase Order unless otherwise expressly agreed to by the parties.
- 3.2 Unless previously withdrawn, all prices are good for a period of 30 days after the Quote is issued unless otherwise stated on the Quote.
- 3.3 Prices are firm but exclusive of (a) value added tax and (b) any similar and other taxes, duties, levies or other like charges arising outside the state of Kansas, or the United States in connection with the performance of Services.
- 3.4 Prices are for all goods delivered EXW (ExWorks) (Incoterms 2010) WSU's shipping point, exclusive of freight, insurance and handling unless otherwise stated in WSU's Quote or order confirmation.

4. PAYMENT.

Payment shall be made (a) in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded); (b) in United States Dollars; and (c) if payment is not made in an advance, shall be made within 30 days of date of invoice unless otherwise agreed to in writing by WSU. Services will be invoiced after they are completed and any resulting Goods have been delivered to WSU's shipping point.

5. DELIVERY PERIOD.

- 5.1 Unless otherwise expressly agreed to by WSU, all periods stated for delivery or completion are to be treated as estimates only and do not contractually obligate WSU in any way.
- 5.2 If WSU is delayed in or prevented from performing any of its obligations due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as WSU reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract price shall be adjusted accordingly.
- 5.3 If delivery of any Goods or Services are delayed due to any act or omission of Buyer, or if having been notified that any goods are ready for dispatch, Buyer fails to take delivery or provide adequate shipping instructions, WSU shall be entitled to place the goods into suitable storage at Buyer's expense. Upon placing the goods into storage, delivery shall be deemed to be complete, risk in the goods shall pass to Buyer and Buyer shall pay WSU accordingly.

6. FORCE MAJEURE.

WSU will not be liable for any failure to perform as required by Contract, due to Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, war, acts of terrorism, fire, floods, unforeseeable shortages of labor, utilities or raw materials and supplies, strikes lockouts, acts of government, and any other hindrances beyond the control of the party obligated to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If such hindrance exceeds eight (8) weeks, then either party shall have the right to cancel the contract and monies paid for Goods or Services not rendered shall be returned to Buyer.

7. DELIVERY, RISK AND TITLE.

Unless otherwise expressly agreed in writing by the parties, any goods delivered shall be delivered Ex Works WSU's shipping point, whereupon all title and risk shall pass to Buyer. Buyer shall be responsible for all insurance of the goods after risk has so passed.

8. INDEPENDENT CONTRACTOR.

WSU and Buyer are not (and nothing in the Contract may be construed to constitute them as) partners, agents, representatives or employees of the other, nor is there any status or relationship between them other than that of



independent contractors. Neither party has any responsibility nor liability for the actions of the other party except as specifically provided in the Contract. Neither party has any right or authority to bind or obligate the other party in any manner or make any representation of warranty on behalf of the other party.

9. NOTICES.

Any notice or other official communication given under the Contract to WSU shall be in writing and shall be deemed delivered when received by certified first class mail, registered mail, overnight courier, by facsimile or electronic mail provided that a copy of such facsimile or electronic mail is promptly sent by certified first class mail, registered or overnight courier, addressed to:

Wichita State University
NIAR Contracts Department
1845 Fairmount Street
Wichita, Kansas 67260-0093

10. DISPUTES.

Pending resolution of any dispute arising under the Contract, excluding disputes regarding payment issues, WSU shall proceed with the performance of the Contract, providing however that the parties proceed in good faith to resolve disputes between themselves. If the parties are unable to resolve the dispute after sixty (60) days WSU may issue a stop work order.

11. INSURANCE/INDEMNITY.

Buyer agrees to indemnify, defend and hold WSU, its officers, agents and employees, harmless from any liability resulting from the use by Buyer of the research, testing results, drawings, schematics, or plans provided to Buyer by WSU under the Order. Should Buyer or its employees, representatives, or agents participate in an on-site visit to WSU, Buyer understands and agrees to be responsible for the safety of such employees, representatives or agents and Buyer warrants that it maintains a policy or program of insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Buyer further understands that WSU and its officers and employees acting within the scope of their employment are subject to the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. WSU relies on the provisions of the Kansas Tort Claims Act and no further insurance is maintained by WSU.

12. CONFIDENTIAL INFORMATION.

12.1 Should it be necessary for WSU personnel to receive confidential information from Buyer, Buyer agrees to state in writing at the time of delivery that such information is confidential, or if given orally, reduced to writing, clearly marked as confidential, within thirty (30) days of the oral disclosure. WSU and its personnel agree to safeguard Buyer's confidential information to the extent permitted by state and/or federal law, for a period of time not to exceed three (3) years from the date of written delivery to WSU. Proprietary Information does not include:

a.) Information that is generally available to the public at the time of the Order;

b.) Information which becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of the receiving party;

c.) Information which thereafter is disclosed to the receiving party by third parties without breaching any obligation of non-use or confidentiality; and

d.) Information that has been independently developed by persons in the receiving party's employ or who otherwise has had no contact with the Proprietary Information.

12.2 WSU retains the right to refuse to accept any information that is not considered to be essential to the completion of the project/test.

13. EXPORT COMPLIANCE.

13.1 Buyer certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Buyer shall provide immediate written notice to WSU if at any time Buyer learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

13.2 Buyer further agrees to comply with all U.S. Laws relating to the transfer, export, or re-export of technical data (as defined in the Export Regulations defined herein) that is subject to export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774 without an export license to any employee or other person who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States. Buyer shall notify WSU in writing prior to disclosure of any technical data or other items subject to EAR or ITAR to WSU. Buyer will reasonably cooperate with and support WSU in obtaining the correct Export Control Classification Number (ECCN), classification of United States Munitions List (USML) category, and any necessary licenses or authorizations required to complete the SOW.

13.3 Buyer agrees that WSU may retain one archival copy of all documents from the project for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

14. SCHEDULING.

14.1 Tentative Scheduling: A tentative or estimated schedule may be provided with the Quote. This schedule only represents a snapshot of opportunity at the time of the Quote.

14.2 Priority Scheduling: Priority scheduling is available at the request of Buyer for a premium cost ranging from 1.5 to 2.5 times the normal cost.

14.3 Project/Test Schedule: The project/test schedule will be agreed to by WSU and the Buyer based on the final Buyer specifications and WSU's acceptance of the Purchase Order. WSU is not responsible for schedule delays due to:

- a) Late delivery of any Buyer plans, materials, test panels, test articles, or other test related delivery;
- b) Test article failures during testing;
- c) Buyer directed changes to the Order;
- d) Equipment failure caused by no fault of WSU;
- e) Environmental conditioning; or
- f) Any other external acts or events that are beyond WSU's control.

14.4 Postponement: If Buyer must postpone work scheduled under an Order for more than thirty (30) calendar days, WSU reserves the right to charge the Buyer against the Purchase Order for any charges that have been incurred and for lost revenue that such delay has caused. These charges include but are not limited to staffing, materials purchases, equipment, rental fees, and storage.

14.5 Cancellation: If a Buyer must cancel an Order, WSU reserves the right to charge the Buyer against the Purchase Order for any charges that may have been incurred and for lost revenue due to the reserved testing slot. These charges include but are not limited to staffing, materials purchases, equipment, rental fees, and storage.

14.6 Maintenance and Repairs: WSU reserves the right to adjust schedules to allow for upgrades, maintenance and/or repairs of any equipment or software that may be necessary.

15. INTELLECTUAL PROPERTY.

15.1 All intellectual property (inventions, information, data, results, know-how, whether protectable by patents, copyrights, trade secrets, or otherwise) arising out of the performance of any work or Services conducted by WSU in completion of the Order will be promptly disclosed to the Buyer. To produce the greatest benefit to the public and in accordance with Kansas Board of Regents policy, where it is proposed that all costs including overhead, salary of investigator, reasonable rent on the use of equipment, etc. are paid by Buyer, rights to intellectual property conceived or developed by at least one employee or agent of WSU pursuant to the project will be determined as follows:

- a) Buyer shall have exclusive rights to intellectual property which involves the use of, composition of, modification to, or improvement to Buyer-provided materials or information or a derivative analogue thereof.
- b) WSU shall have exclusive rights to intellectual property involving a scientific process, technique, procedure, medium, device or other process which is not unique to or derived from Buyer-provided materials or information. WSU shall notify Buyer of such intellectual property, and Buyer shall have a ninety (90) day option to negotiate an exclusive license thereto.

15.2 The Parties shall execute a separate license agreement consistent with the exclusive rights and obligations herein,

the remaining terms of which shall be negotiated in good faith on fair and reasonable terms by WSU and Buyer to vest such exclusive rights in either WSU or Buyer as applicable. Notwithstanding anything herein, Buyer hereby grants and WSU hereby reserves for itself a fully paid up, non-exclusive, non-royalty-bearing license to use intellectual property arising out of the project for non-commercial educational and research purposes.

16. PUBLICATION RIGHTS.

Under Kansas Board of Regents policy, WSU investigators shall be permitted to publish in journals, dissertations, theses and other scholarly and professional publications, and to present at symposia and professional meetings the methods and results of the projects. Buyer shall, at its request in writing, be furnished copies of any proposed publication or presentation at least sixty (60) days in advance of the submission of such proposed publication to a journal, editor or third party. During the 60 day review period, Buyer may object to the proposed publication or presentation only on the basis that it contains patentable subject matter that needs protection and/or it contains confidential information belonging to Buyer. In the event of such an objection, the parties shall negotiate in good faith an acceptable version of the document.

17. WARRANTY

17.1 WSU shall ensure that the Goods and Services meet the requirements set forth in the applicable SOW.

17.2 The nature of the Services that is being provided under this Order are being provided by a state educational institution and generally include research, testing, and engineering services and, as such, unless expressly stated in the Order, no warranty is given or implied for such Services except as stated in this Section 17.

17.3 No more than thirty (30) days from the date any Goods and/or Services are delivered to Buyer, Buyer shall, with respect to any Goods or Services that do not conform in any respect to the SOW, have the right to object to such Goods or Services that have been delivered.

17.4 Upon receipt of Notice from Buyer that the Goods or Services did not meet the specifications of the SOW, WSU shall re-perform such defective Services at no cost to Buyer. Any re-performed Services are not warranted for the same amount of time as the original Services.

17.5 In the event that WSU is unable to remedy or correct any non-conforming Goods or Services, WSU shall promptly negotiate with Buyer for an amicable resolution that may include, but not be limited to, return of all costs incurred by Buyer as a result of rejection of non-conforming Goods or Services.

17.6 Payment for Goods or Services delivered or inspection by Buyer shall not constitute acceptance of the Goods or Services and shall not relieve WSU and/or its subcontractor of applicable warranties or other obligations hereunder.

17.7 WSU is not independently providing to Buyer any warranty with regard to any Goods manufactured by or procured from a third party. WSU will ensure that all Goods are produced consistent with the time requirements and specifications set forth in the SOW. WSU will assign all



warranties with regard to such Goods that WSU receives from any vendor or subcontractor to Buyer.

17.8 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION THIS SECTION 17, WSU MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING (BUT NOT LIMITED TO) ANY (1) WARRANTY OF MERCHANTABILITY; OR (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OR PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

18. WAIVER/SEVERABILITY.

18.1 Waiver of Rights: Any waiver shall be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

18.2 Severability: The illegality or invalidity of any provision of the Order shall not impair, affect or invalidate the other provisions of the Order.

19. ASSIGNMENT

Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of WSU.

20. GOVERNING LAW.

This Agreement is governed by the laws of the State of Kansas. Any legal action involving the subject matter of the Order shall be adjudicated in Kansas and is subject to, governed by, and construed according to the laws of the State of Kansas, excluding any conflict of law rules.