

**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.
- 1.2 "Contract Documents" means these Terms and Conditions, and any associated Quote or resulting Purchase Order.
- 1.3 "Forward Intellectual Property" means any Intellectual Property first conceived or first actually reduced to practice by WSU and/or Buyer as a result of the Services performed under these Contract Documents.
- 1.4 "Goods" means any goods, articles, products, data, and tangibles supplied to Buyer by WSU.
- 1.5 "Intellectual Property" means all inventions, information, data, results, know-how, whether protectable by patents, copyrights, trade secrets or otherwise.
- 1.6 "Pre-Existing Material" means all pre-existing Intellectual Property, technical knowledge, methods, materials, design documents, presentations, techniques, engineering data, know-how, procedures and software that (i) is owned or controlled by a Party prior to the provision of any Services or (ii) is generated or acquired by a Party at any time independently from their efforts associated with the Services.
- 1.7 "Purchase Order" means the order or request for Quote or for Services.
- 1.8 "Quote" means a written quotation, bid, or proposal for Services provided to Buyer from WSU.
- 1.9 "Services" mean any and all collaboration, design, research, testing, engineering, aircraft maintenance, repair services, modifying, manufacturing and/or procuring of Goods, and other related services provided by WSU to Buyer.
- 1.10 "Terms and Conditions" mean these Standard Terms and Conditions.
- 1.11 "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 any Quote or Purchase Order. All Buyer requests for Services must be in writing and are subject to these Terms and Conditions. No other terms or conditions put forward by Buyer and no other representations, warranties, guarantees, or statements not contained in the Contract Documents, 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 Contract Documents. The Contract Documents: (1) expressly limits WSU's provisions of any Services to the terms of the Contract Documents; (2) prevail over any terms or conditions contained in any other documentation; and (3) expressly exclude any of Buyer's general terms and conditions of sale or any other document issued by Buyer that are not part of the Contract Documents.

**3. VALIDITY OF QUOTE AND PRICES.**

- 3.1 The price of the Services 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 All prices stated in the Quote are good for a period of 30 days after the Quote is issued, unless otherwise stated on the Quote or withdrawn by WSU.
- 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 exclusive of any shipping costs, freight, insurance, and handling, unless otherwise stated in the Quote or Purchase Order.

**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. Invoices will be issued no more often than bi-weekly, unless otherwise agreed to by the Parties. .

**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 Documents), the delivery/completion period and the price shall be adjusted accordingly.
- 5.3 If delivery/completion of any 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 the Contract Documents, due to Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, war, acts of terrorism, fire, floods, health pandemics or epidemics (including but not limited to COVID-19), 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 affected Quote or Purchase Order, and any monies paid for such Goods or Services not rendered shall be returned to Buyer.



**7. DELIVERY, RISK, TITLE, AND INSPECTION.**

- 7.1 Unless otherwise expressly agreed in writing by the parties, any Goods delivered shall be delivered EXW WSU's shipping point, whereupon all title and risk shall pass to Buyer.
- 7.2 Buyer shall inspect any Goods received under the Contract Documents within ten (10) days of delivery.

**8. INDEPENDENT CONTRACTOR.**

WSU and Buyer are not (and nothing in the Contract Documents 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 Documents. 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 Documents 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  
contracts@niar.wichita.edu

**10. DISPUTES.**

Pending resolution of any dispute arising under the Contract Documents, excluding disputes regarding payment issues, WSU shall proceed with any performance required, provided 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. INDEMNITY.**

- 11.1 Buyer agrees to indemnify, defend, and hold harmless WSU, its officers, agents, and employees, from: (i) any liability arising under the Contract Documents; (ii) any claims by any third party arising from WSU's provision of Services, including any claims of tortious interference or of infringement of a third party's Intellectual Property, publicity, privacy, or other rights; (iii) any breach of any representation or warranty made by Buyer in the Contract Documents; or (iv) Buyer's violation of any law, rule, or regulation connected to the Services.
- 11.2 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.

**12. INSURANCE.**

- 12.1 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.*
- 12.2 WSU shall maintain Aviation General Liability at its own cost and expense with limits not less than \$50 million. WSU shall provide Buyer, upon request from Buyer, a certification of evidence regarding the existence and validity of such insurance. WSU shall also maintain workers' compensation coverage as required under Kansas law. WSU relies on the provisions of the Kansas Tort Claims Act and has no obligation to maintain any further insurance or coverage.
- 12.3 Buyer shall maintain Aviation General Liability at its own cost with limits not less than \$100 million and including coverage for premises, products, completed operations, grounding, contractual, independent contractors. Buyer shall maintain hangarkeepers' liability coverage in an amount not less than \$7,500,000 per aircraft, \$25,000,000 per occurrence. Buyer shall name WSU as an additional insured and shall provide WSU a certification of evidence regarding the existence and validity of such insurance(s).

**13. CONFIDENTIAL INFORMATION.**

- 13.1 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;
  - 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.
- 13.2 WSU retains the right to refuse to accept any information that is not considered to be essential to the completion of the project/test.

**14. EXPORT COMPLIANCE.**

- 14.1 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.

- 14.2 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 comply with the obligations set forth in the Contract Documents.
- 14.3 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.

**15. DATA / TEST RESULTS.**

- 15.1 **Preliminary Data:** Data that is provided to the Buyer during testing and before the formal report is considered by WSU as preliminary and not final. If no formal report is requested, only preliminary data will be supplied. Preliminary data will be maintained electronically by WSU for 12 months after completion of testing.
- 15.2 **Final Data:** Final data will be provided to the Buyer per the project schedule in the formal report. A formal report will be generated if requested by the Buyer in the Contract Documents. Cost of the report will be reflected in the Quote. A copy of the formal report will be maintained electronically by WSU for 12 months after completion of testing.
- 15.3 **Storage:** Unless other arrangements are made, tested articles will be returned to the Buyer at the Buyer's expense. Storage of tested articles will be at the Buyer's expense. WSU reserves the right to remove and store failed test articles at the Buyer's expense until articles are repaired and testing can be resumed.
- 15.4 **Tools, Equipment, and Test Fixtures:** WSU will retain all tools, equipment and test fixtures used in a test. The Buyer may request these items after a test if the Buyer paid for such items.
- 15.5 **Test Results:** WSU is responsible for providing test results per Buyer guidelines or other recognized testing standards. WSU will maintain calibration records for testing traceability. WSU is not responsible for test values below predicted values when WSU Quality Manual testing protocols have been followed.

**16. SCHEDULING.**

- 16.1 **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.
- 16.2 **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.
- 16.3 **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 deliverables;
  - b) Test article failures during testing;
  - c) Buyer directed changes to the Purchase 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.
- 16.4 **Postponement:** If Buyer must postpone work scheduled under a Quote or Purchase Order for more than thirty (30) calendar days, WSU reserves the right to charge the Buyer against the Quote or Purchase Order for any charges that have been incurred, for charges related to material purchases that cannot otherwise be cancelled or repurposed by WSU, 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.
- 16.5 **Cancellation:** If a Buyer must cancel a Quote or Purchase Order, WSU reserves the right to charge the Buyer against the Quote or Purchase Order for any charges that may have been incurred, for charges related to material purchases that cannot otherwise be cancelled or repurposed by WSU, 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.
- 16.6 **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.

**17. INTELLECTUAL PROPERTY.**

- 17.1 Each Party shall own and retain the entire right, title, and interest, including all patents, copyrights, and other Intellectual Property rights, in and to their respective Pre-Existing Materials. Each party hereby grants to the other Party a non-exclusive, non-transferable, royalty-free, worldwide license to use its Pre-Existing Materials for the sole purpose of providing the Services.
- 17.2 Should any Forward Intellectual Property be created as a result of the Services, the terms regarding such Forward Intellectual Property will be determined in a separate, mutually negotiated agreement between the Parties.

**18. 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 a mutually acceptable version of the document.

**19. WARRANTIES FROM WSU.**

- 19.1 WSU shall ensure that the Services meet the requirements set forth in the applicable Quote or Purchase Order; will be free from defects in materials and workmanship; and will comply with applicable federal, state, and local laws in providing the Services.
- 19.2 The nature of the Services that is being provided under the Contract Documents are being provided by a state educational institution and generally include research, testing, and engineering services and, as such, unless expressly stated in the Quote or Purchase Order, no warranty is given or implied for such Services, except as stated in this Section 19.
- 19.3 No more than ten (10) 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 Quote or Purchase Order, have the right to object to such Goods or Services that have been delivered.
- 19.4 Upon receipt of Notice from Buyer that the Goods or Services did not meet the specifications of the Quote or Purchase Order, 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.
- 19.5 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.
- 19.6 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.
- 19.7 THE REMEDIES SET FORTH IN SECTION 19.4-19.6 ARE BUYER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NON-CONFORMING GOODS OR SERVICES/
- 19.8 .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 Quote or Purchase Order. WSU will assign all warranties with regard to such Goods that WSU receives from any vendor or subcontractor to Buyer.
- 19.9 **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION THIS SECTION 19, 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.**

**20. WARRANTIES FROM BUYER.**

Buyer acknowledges that WSU has agreed to perform the Services in reliance on the following representations and warranties:

- 20.1 Entering into this Agreement does not violate any agreement or obligation existing between Buyer and any third party;
- 20.2 Buyer has obtained all necessary releases, consents, rights, licenses, representations, warranties and assignments necessary for WSU to provide the Services;
- 20.3 Buyer has lawfully acquired unrestricted title to and ownership of any aircraft (including any aircraft part, specimen, or material) ("Aircraft") provided to WSU in connection with the Services;
- 20.4 Buyer will not provide any unauthorized third party trade secret information in connection with the Services;
- 20.5 If any flight test is necessary to provide the Services, Buyer will provide its own flight test crew and/or authorize WSU to provide any flight test crew;
- 20.6 Buyer is unaware of any third party Intellectual Property rights that would be infringed by the Services and has no subjective belief that there is a high probability that the Services would infringe on any third party Intellectual Property rights.

**21. WAIVER/SEVERABILITY.**

- 21.1 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.
- 21.2 Severability: The illegality or invalidity of any provision of the Contract Documents shall not impair, affect or invalidate the other provisions of the Contract Documents.

**22. ASSIGNMENT**

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

**23. ABILITY TO SUBCONTRACT**

WSU may use a contractor of WSU (including, but not limited to, an affiliate of WSU) to perform WSU's obligations under this Agreement; provided, that WSU's use of a contractor shall not release WSU from any duty to fulfill WSU's obligations under the Contract Documents.

**24. REVERSE ENGINEERING**

In the event that the Services provided by WSU under the Contract Documents include the reproduction of any physical part or assembly of parts, Buyer shall provide WSU with information and physical specimens to use to create the reproduction and Buyer shall ensure that it has the right to provide the information and physical specimens without



violating any obligation (e.g., confidentiality agreement) to a third party. Buyer will also ensure that the information it provides is not subject to third party copyright protection. Buyer is not aware of any third party patents which would be infringed by the reproduction of any physical part or assembly of parts to be modeled by WSU. Further, Buyer agrees to indemnify WSU against any claim (e.g., tortious interference, Intellectual Property infringement) arising from WSU's use of Buyer-provided information or physical specimens provided by Buyer to WSU in creating a reproduction of any physical part or assembly of parts.

**25. GOVERNING LAW.**

The Contract Documents are governed by the laws of the State of Kansas. Any legal action involving the subject matter of the Contract Documents 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.

**26. STATE OF KANSAS TERMS**

The provisions found in [Contractual Provisions Attachment](#) (WSU's Form DA-146a, as amended from time to time) is hereby incorporated into these Contract Documents.

**27. TERMINATION.**

The Contract Documents may be terminated in whole or in part by either party upon thirty (30) days written notice to the other party. Upon termination by either party, WSU will be reimbursed for all costs actually incurred in the performance of the Contract Documents and all non-cancelable obligations, pursuant to Section 16.5.

**28. LIMITED LIABILITY.**

In no event shall WSU be liable for incidental, indirect, special, or consequential or exemplary damages, whether foreseeable or not, which are in any way related to or arise out of the Services or these Contract Documents, or from the loss of goodwill, profits, or loss business, and/or from any other cause whatsoever.

**29. AIRCRAFT HANGAR STORAGE**

To the extent Services includes the storage of Buyer's Aircraft, the following additional terms apply:

29.1 If Buyer fails to make timely payment or fails to remove the Aircraft from WSU's hangar at the conclusion of Services, WSU shall be entitled to place the Aircraft into suitable storage at Buyer's expense. Upon written notice of such storage and the expiration of thirty (30) days, WSU will consider the Aircraft abandoned.

29.2 Buyer shall be responsible for ensuring the full value of the Aircraft at all times during the storage.