



*Curtiss-Wright Defense Solutions (CWDS) terms and conditions herein apply to the following legal entities:*

*Dy4, Inc., Dy4 Systems, Inc., Dy4 Systems UK Limited, Curtiss-Wright Controls Electronic Systems, Inc., Curtiss-Wright Antriebstechnik GmbH, ACRA CONTROL Limited, ACRA CONTROL, Inc., Curtiss-Wright Controls (UK) Limited, Peerless Instrument Co., Inc., Penny & Giles Aerospace Limited, Tactical Communications Group, LLC, Teletronics Technology Corporation, Pacific Star Communications, Inc. dba PacStar, Pacific Star Communications, Inc. dba Parvus, and 901 D, LLC.*

## **1. HEADINGS NOT CONTROLLING**

The headings of these Terms and Conditions of Sale are solely for organization and reference and shall not affect their interpretation. Where the Contract requires, items stated in the plural herein shall be deemed to mean the singular and vice versa.

### **a) Definitions**

“Buyer” means the person, firm or company identified on the face of the Contract with whom Seller is Contracting.

“Conditions” means the standard terms and conditions making up the Contract and includes any special terms and conditions agreed in writing between Seller and the Buyer.

“Contract” means the contract between Seller and the Buyer for the sale of the Products upon the terms and conditions set forth herein and Seller’s written acknowledgement of Order.

“Current Specification” includes all written statements by Seller including without limitation statements appearing in Seller’s marketing literature, packaging, operating instructions and technical specifications, and relating to the Products including without limitation their storage, installation, suggested use, operation and maintenance. All such statements are given by Seller in good faith as to their accuracy at the date appearing on this Contract.

“Products” means the products (including without limitation (i) any installment of the products or (ii) some or all of the Products and in the case of installment some or all of the Products in that installment (iii) services or (iv) training) which Seller agrees to supply under the Order.

“Order” means any order sent to Seller for the supply of Seller’s Products which will be accepted entirely at the discretion of Seller and if so accepted will only be accepted upon these Conditions and by means of Seller’s Acknowledgement of Order. Each Order which is so accepted shall constitute an individually legally binding Contract between Seller and the Buyer.

“Seller” means the CWDS entity identified on the written acknowledgement of Order.

## **2. APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT**

Seller’s written acceptance of Buyer’s offer to purchase is made only on the express understanding and condition that THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER’S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER’S ORDER, regardless of whether the Buyer accepts these Terms and Conditions by a written acknowledgment, by implication, or by retention of or payment for Products ordered hereunder.

### **a) Incorporation**

These Terms and Conditions together with Seller’s written acknowledgement of order constitute the only terms and conditions on which Seller is prepared to deal with the Buyer and shall govern the Contract overriding any and all conflicting and supplementary terms or conditions referred to or contained in any Order or other documents or correspondence and no addition or alteration or substitution of these Terms and Conditions will bind Seller or form part of any Contract unless they are expressly accepted in writing by a person authorized to sign on Seller’s behalf. Acceptance of conditions referred to or contained in any Order, acceptance of quotation or otherwise brought to the notice of Seller by the Buyer and superseding all and any prior promises, representations, undertakings or implications. No Contract will be concluded before Seller dispatches its written acknowledgement of Order to the Buyer.

### **b) Variation**

No variation to these Terms and Conditions or Seller’s written acknowledgement of Order however made (whether by representation, arrangements, understandings, agreements or otherwise) shall be binding on Seller unless such variation is in writing and signed on behalf of Seller by a duly authorized representative.

### **c) Orders**

All Orders placed by the Buyer must:

- i. be numbered;
- ii. specify the address where the Products are to be delivered ("the place of delivery");
- iii. specify the address and contact details to where Seller's invoice is to be sent.

### **d) Code of Conduct**

Buyer acknowledges that:

- i. Curtiss-Wright Corporation has posted a copy of Curtiss-Wright Corporate Policy No. 1, “Code of Conduct” on the world wide web at: <https://curtisswright.com/investor-relations/governance/governance-documents/default.aspx>
- ii. Buyer has reviewed a copy of the policy; and
- iii. Buyer agrees to comply with the provisions of the policy.

### **e) Data Privacy**

The parties may, in the performance of this Order, provide each other with personal data such as name and certain business contact details, relating to individuals engaged by the other party or its affiliates for the purposes of executing and performing the obligations under this Order and managing the business relationship between the parties. Seller will process personal data in line with Seller’s Privacy Notice, which is amended periodically.

- i. Buyer acknowledges that (1) Curtiss-Wright Corporation has posted a copy of Curtiss-Wright Corporate Privacy Notice on the world wide web at: <https://www.curtisswright.com/privacy-notice/default.aspx>; and (2) Buyer has reviewed a copy of the privacy notice;
- ii. Each party will (1) Ensure all personal data will be processed in accordance with the terms of the Order and applicable privacy laws; and (2) Implement all appropriate security measures to protect personal data provided by the other party against accidental, unlawful, or unauthorized (a) destruction (b) loss, (c) alteration, (d) disclosure, or (e) access (including remote access);
- iii. Buyer further agrees to enter into any additional agreements or adhere to any additional contractual terms and conditions related to personal data as Seller may instruct in writing that Seller reasonably deems necessary to address applicable privacy laws.

## **3. CANCELLATION/ TERMINATION**

a) Buyer has no right to cancel this Order, in whole or in part, absent the prior written agreement of Seller. Custom products and end-of-life last time buys are non-cancelable. Cancellation of Orders for Standard Products is permitted only if written notice of cancellation is delivered to Seller at least thirty (30) days before the initially scheduled delivery date. Cancelable Orders may be canceled by Buyer only upon payment of reasonable cancellation charges,

which shall include but not be limited to expenses already incurred for labor and material costs, overhead, commitments made by Seller, and a reasonable profit. Seller's proposal may be provided on a percent complete basis, at the sole discretion of Seller. If Buyer terminates or cancels an Order without Seller's written agreement, Buyer shall be liable for all unpaid charges and sums due to Seller and will pay to Seller for all damage and will reimburse all costs including reasonable attorney's fees and costs, suffered or incurred by Seller as a result of the breach by the Buyer of its obligations under the Contract, including any incidental, exemplary, indirect, special, or consequential damages. The remedies provided herein shall be in addition to all other means and remedies available to Seller.

b) Without prejudice to any other right or remedy available to Seller, Seller shall be entitled to terminate this Contract or suspend any further deliveries under it without liability to the Buyer by giving written notice to the Buyer where:

- i. the Buyer fails to pay when due any sum payable under the Contract;
- ii. the Buyer fails to observe or perform any of the provisions of the Contract; c. the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- iii. an encumbrancer takes possession, a receiver is appointed, of any of the property or assets of the Buyer;
- iv. the Buyer ceases, or threatens to cease, to carry on business; or
- v. Seller reasonably **APPREHENDS** that any of the events listed in (iii) to (v) above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

#### 4. RESCHEDULES

a) Buyer may be entitled to reschedule a Product shipment not more than once, and only if Buyer gives at least thirty (30) days written notice of such reschedule and the rescheduled shipment date is no later than thirty (30) days after the originally scheduled delivery date for Custom Product, and no later than sixty (60) days after the originally scheduled delivery date for Standard Product.

b) For Custom Product, if Buyer requests a reschedule longer than thirty (30) days and less than four (4) months, Buyer will be charged a reschedule fee of 15% of the value of the rescheduled item(s) which shall be reflected in an Order amendment to document Seller's approval of the reschedule.

#### 5. PRICES AND PAYMENTS

a) Unless otherwise specified in the quotation, the following Contract Financing/Invoicing Terms shall apply to Orders greater than or equal to \$500,000 US:

- 15% CV Advanced/Installment Payment, invoiced upon Contract award
- 25% CV Installment Payment, invoiced at the ½ way point between Contract award and the first delivery date
- 60% Unit Price Installment Payment, invoiced upon each delivery

b) Payment for product support subscriptions and/or Lifecycle Services is due in full at commencement of support.

c) After formal credit approval, payment terms are net thirty (30) days from the date of invoice, unless otherwise specified in the Seller quotation. Otherwise, terms are cash in advance. Buyer shall pay interest on amounts not paid when due, at the rate of one and one-half percent (1.5%) per month from the day following the due date, until full payment is received. Seller may suspend further deliveries to Buyer until all sums overdue from the Buyer have been paid. Remittances must be made to the address on the invoice. Transportation and installation costs are the sole responsibility of Buyer.

If this Order is issued for the acquisition of Commercial Items or Services related thereto, in support of a US Government Contract, the following FAR clauses shall be incorporated in this Contract, as if fully set forth herein. The terms "Government", "Contracting Officer", and "Contractor" shall be revised to suitably identify the contracting parties (Buyer and Seller) and affect the proper intent of the Clause. Buyer, not the Government, shall administer the installment payment(s) as defined in this Contract:

52.232-29 -- Terms for Financing of Purchases of Commercial Items

52.232-30 -- Installment Payments for Commercial Items

52.232-31 -- Invitation to Propose Financing Terms

#### 6. ASSIGNMENT

Neither party shall assign the Contract or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained. Notwithstanding the foregoing, Seller may assign the Contract to any entity controlled by or under common control of Curtiss-Wright Corporation.

#### 7. WAIVER

Failure by Seller to assert all or any of its rights upon any breach of the Contract shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

#### 8. INSPECTION AND ACCEPTANCE

All Products shall be deemed accepted upon delivery, unless otherwise stated in Seller's quote. Acceptance shall constitute acknowledgement of full performance by Seller of all obligations under the Contract except as stated in the Limited Warranty provision herein.

#### 9. LIMITED WARRANTY

a) Seller warrants that the Products and services delivered to Buyer shall be free from defects in material and workmanship, provided that the Product has not been subjected to accident, abuse, or misuse, and that the Product has been operated in accordance with the Seller's recommendations. Such warranty shall be effective for twelve (12) months after Seller's delivery unless a different term has otherwise been agreed to in writing by Seller. If a Product is determined to be in breach of this warranty, Seller's liability shall be to repair or replace such Product (at Seller's sole discretion and option), which shall be Buyer's sole remedy for such breach of warranty. Software is warranted, if at all, only to the extent provided in the applicable software license, and Seller makes no warranty or representation that the operation of software will be uninterrupted, error free, or that it will meet Buyer's specific requirements. Seller disclaims all liability with respect to Buyer data, including software, stored in returned Products. The warranty does not cover malfunctions, failures or defects resulting from abuse, misuse, accident, alteration, neglect, improper maintenance, or unauthorized or improper repair or installation. **EXCEPT AS PROVIDED HEREIN SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND BUYER WAIVES ALL OTHER**

WARRANTIES, OBLIGATION OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF SELLER.

b) Notwithstanding the foregoing the following warranty conditions shall apply to the following Products:

<u>Product Type</u>	<u>Period from Date of Shipment</u>
• Parvus Cisco-based products (without extended service contract)	90 days
• Parvus Inactive/End of Life Products	30 days
• Parvus Conformal Coated Board-Level Products	30 days
• TCG Products	6 months
• PacStar Products	90 days
• Repaired Product	90 days or remainder of initial warranty period

## 10. CHANGES

a) Product Changes. Unless otherwise agreed to in writing by Seller, Seller at all times shall have the right, and is entitled in its sole discretion, to make substitutions, changes, additions or improvements to the Products being delivered under an Order without liability or obligation to incorporate such changes, additions or improvements in any Product manufactured, sold or delivered prior to incorporation of the change, addition or improvement. Such right is only provided that they will not adversely affect form, fit or function of the Product.

b) Order changes. Buyer may at any time, by written notice, without notice to any surety, make changes or additions within the general scope of the Order in any one or more of the following: technical documents, method of shipment or packaging, time and place of inspection, delivery or acceptance and the amount of Buyer/Government furnished material. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Order, an equitable adjustment shall be made in the price and delivery schedule, or both, and the Order modified accordingly. Any claim by Seller for such adjustment must be made within thirty (30) days of the receipt of such notice. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the "Dispute Resolution" clause 20 or 21, of these Terms and Conditions.

Work on any Product that is stopped or delayed by Buyer for any reason may be subject to a restart fee determined by Seller. Any Product prototypes delivered by Seller will not be upgraded to one or more finished Products without additional cost to Buyer, unless agreed by Seller, in writing, prior to the start of work. Any Buyer request for changes to scheduled delivery dates will not be accepted by Seller unless approved in writing, and may be subject to expedite or delay fees.

## 11. FORCE MAJEURE/EXCUSABLE DELAY

Neither party hereto shall be in default or liable for any delay or failure to comply with the Contract if such delay or failure is due to causes beyond its reasonable control, provided that such party shall notify the other party in writing, within thirty (30) calendar days after discovery of the circumstances attributable to such delay or failure. Force Majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of government authority (including export requirements/restrictions). In the event of any delay caused by such circumstances, the date of delivery shall, at the discretion of Seller, be deferred for a period equal to the time of loss by reason of the delay. If the excusable delay circumstances extend for six months, either party may, at its option, terminate the Contract under the Cancellation/Termination Clause herein.

## 12. QUALITY ASSURANCE

Where required, Seller will maintain a quality control system to an industry recognized quality standard. Unless otherwise specified, all Products are manufactured in accordance with Seller's standard processes, except that third-party Products supplied by Seller are manufactured under the third-party's quality system.

## 13. RETURN MATERIAL AUTHORIZATION (RMA)

a) In the event that any Product requires warranty or repair service, a Return Material Authorization (RMA) number, or equivalent repair number, MUST BE OBTAINED FROM Seller BEFORE such can be returned. All returns must be shipped, freight prepaid, to Seller. No unauthorized returns will be accepted by Seller. To obtain an RMA, the following information must be supplied: Product name and part number, serial number, and detailed description of the problem. Following receipt of any request for an RMA, Seller shall inform Buyer of the warranty status of such return. Products returned under a valid warranty claim shall be repaired or replaced at no expense to Buyer, other than costs incurred in returning the same to Seller. Should a returned Product be diagnosed as "no trouble found", Seller will contact Buyer for technical resolution before the Product is returned to Buyer. With regard to out-of-warranty Products, no repair work shall proceed without receipt of a new Order or written authorization from Buyer related to such repairs. If a preliminary assessment indicates that the costs associated with any such repair will approach or exceed original price of the Product, then repairs may not be undertaken, and Buyer will be notified. All work performed on out-of-warranty Products is warranted for ninety (90) days from the date of return shipment to Buyer, provided that Buyer notifies Seller of any warranty claim related to such repairs within such ninety (90) day period.

b) Defective Products are returned to Seller's factory at the Buyer's expense if so requested by Seller and this condition shall not apply to Products that have been processed or interfered with other than by Seller or which have not been stored, handled or used in accordance with Seller's instructions.

Where the defective Products have been incorporated into or combined with another product of the Buyer, the associated costs of delivery borne by the Buyer referred to above shall not include any costs borne by the Buyer in recalling or replacing the product in which the defective Products have been incorporated.

c) The Buyer must return the defective Products to Seller within fourteen (14) calendar days' notice. Where the returned Products, upon inspection by Seller, prove not to be defective the Buyer will at Seller's option pay or refund Seller any associated costs of delivery (including returning the defective Products to Seller) and any storage, testing, inspection and other incidental costs incurred by Seller as a result of the Products having been returned.

d) A fixed price shall be charged to Buyer for all Product evaluations and/or repairs including Product that is deemed Beyond Physical Repair (BPR) or No Fault Found (NFF). In no event shall the Buyer impose debits on Seller for cost of returned Products.

## 14. TITLE RETENTION AND SECURITY INTEREST

Seller hereby reserves a security interest in Products sold and the proceeds thereof, in the amount of its sales price. Default by the Buyer under the Contract with Seller will result in Seller's right to repossess the Products sold hereunder and without liability to Buyer. These security interests will be satisfied by

payment in full. On request of Seller, Buyer will promptly execute financing statements and other instruments which Seller may request to perfect its security interest.

#### **15. INSURANCE**

Seller shall maintain and carry liability insurance which includes but is not limited to commercial general liability (including product liability and for services to be performed, completed operations liability) in a sum no less than \$5 million, automobile liability in a sum no less than \$5 million, workmen's compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million, with insurance carriers acceptable to Buyer. Seller will, if requested by Buyer, furnish certificates of insurance on the foregoing coverages.

#### **16. INTELLECTUAL PROPERTY AND NON-DISCLOSURE**

**a)** Seller is and shall remain the sole and exclusive owner of any and all rights in any intellectual property (including any patents, trademarks, copyrights, and designs) created, designed, or conceived by Seller in connection with or arising out of the work performed by Seller. No work performed by Seller shall be considered a work made for hire. Seller grants Buyer only a limited, nonexclusive, royalty-free license to use the intellectual property embodied in the Product provided, supplied or sold by Seller only as necessary for Buyer to utilize such Product. Nothing in any development agreement or otherwise shall be construed as vesting in or transferring to Buyer any ownership of any intellectual property rights.

**b)** If the Order is in support of a US Government Contract, deliverable technical data will be provided with the following Data Rights in accordance with DFARS 252.227-7013 and 252.227-7015:

i. Non-commercial Technical Data and Software: Limited Data Rights to Technical Data, Restricted Data Rights to Software

ii. Commercial Technical Data: Commercial Data Rights

**c)** Information provided by Seller to Buyer remains the property of Seller. Buyer shall comply with the terms of any proprietary information agreement with Seller, where applicable, and comply with all proprietary information markings and restrictive legends applied by Seller to anything provided hereunder to Buyer. Buyer shall not use any Seller provided information for any purpose except to fulfill its obligations under its contract with its customer and shall not disclose such information to third parties without the prior written consent of Seller. Buyer shall maintain data protection processes and systems sufficient to adequately protect Seller provided information and comply with any law or regulation applicable to such information.

**d)** Except as required by law, Buyer shall not release any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, without the prior written approval of Seller. Buyer shall not use "Curtiss-Wright," or any other trademark or logo owned by Seller, without Seller's prior written consent.

#### **17. TIME OF DELIVERY AND TITLE**

Delivery shall be FCA: Origin, unless otherwise quoted. Title to Products and risk of loss or damage shall pass to the Buyer upon Delivery and Buyer shall be responsible for insuring the Products. All Products shall be packaged in accordance with good commercial practice. Title to Software shall be in accordance with the applicable Shrink Wrap/Software License Agreement.

#### **18. LIMITATION OF LIABILITY**

SELLERS' maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under any agreement with Buyer, whether resulting from breach of Contract, breach of warranty, tort, products liability, or otherwise, shall not exceed the value of the Order.

Under no circumstances shall Seller or any affiliate of Seller be liable to Buyer for loss of business or profit or any other economic loss, or any incidental, exemplary, indirect, special or consequential damages even if the Seller has been advised of the possibility of such damages.

Notwithstanding the foregoing or anything in the Contract, nothing in this clause shall limit damages in connection with:

- Fraud or willful misconduct;
- Claims that Seller's Products infringe patents of any third party.
- Damages incurred in third party claims for bodily injury, property damage or death to the extent caused by Seller's products.

#### **19. INTELLECTUAL PROPERTY INDEMNITY**

Except insofar as an Order calls for Products pursuant to Buyer's designs, drawings or specifications, Seller agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any Products manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any United States, Canadian or European patent which has issued at date of the Contract, and Buyer's reasonable costs and expenses in defense of such suit if Seller does not undertake the defense thereof, provided Seller is promptly notified of the threat or commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof.

Seller's indemnity shall not apply where infringement would not have occurred from the normal use for which the Products were designed. No responsibility is assumed for actual or alleged infringement of any foreign patent. Seller's liability for damages hereunder is limited to those computed solely on the value of any Products sold to Buyer. In no event shall Seller be liable for consequential damages or costs applicable thereto. In the event of any claim that a Product furnished hereunder infringes any United States, Canadian or European patent, Seller may at its option and expense (a) procure for Buyer the right to continue using the Product, or (b) replace or modify the Product so that it becomes non-infringing, or (c) grant Buyer a credit for such Product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Seller. Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Seller based upon a claim of infringement resulting solely from the Buyer combining any Product furnished hereunder with any item not manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. In the event any Product to be furnished under the Contract is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller's obligation to Buyer as above. Seller shall not be obligated to defend or be liable for costs and damages from a modification of Product after delivery by Seller, or from other fault or action of Buyer. Seller may decline to make further shipments to Buyer hereunder if infringement has occurred for such reasons. THE RIGHTS AND OBLIGATIONS ABOVE ARE IN LIEU OF ANY OTHER INDEMNITY OR WARRANTY, EXPRESS OR IMPLIED BY SELLER OR BUYER, WITH RESPECT TO INTELLECTUAL PROPERTY (PATENTS, TRADE SECRET, MASK WORKS, TRADEMARKS, COPYRIGHTS, OR THE LIKE).

**20. SOFTWARE LICENSE**

- a) In the event that a software license is provided with the delivery of software by Seller to Buyer, wherein a condition of use of the software is acceptance of a Shrink Wrap/Software license agreement/End User License Agreement ("EULA") ("Shrink Wrap/Software License Agreement/EULA"), the Shrink Wrap/Software License Agreement/EULA shall be controlling. In the absence of a Shrink Wrap/Software License Agreement/EULA or a separate written software license agreement between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:
- b) Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, nontransferable license to use the software or software documentation provided herein: (i) in the course of the normal operation in or with Seller Products, (ii) in the analysis or the formatting of reports using data from such Seller Products or, (iii) on Seller Products or non-Seller products that are used to test, maintain, download, or process information compiled by Seller Products. Making copies of software or documentation except for one copy for archive purposes is prohibited unless specifically authorized by Seller in writing. Should such copying be authorized, Buyer will reproduce and include all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends, both in and on every copy of licensed software and documentation and in any form.
- c) The software license and rights granted by Seller to Buyer hereunder are personal to Buyer. The licensed software and documentation may not be sub-licensed, transferred, or loaned to any other party without Seller's prior express written consent, except that Buyer may transfer the licensed software and documentation in conjunction with the resale of any Product or Seller supplied test equipment in which the licensed software and documentation is installed or with which it is used. Such permission to transfer is contingent upon the transfer of Buyer's agreement to use and protect the confidentiality of the licensed software and documentation under the same or similar terms as those set forth in this software license. Buyer will, however, promptly notify Seller in writing of the transfer of the licensed software and documentation. Buyer agrees to utilize all licensed software and documentation only as authorized herein. Buyer may not either itself or with the assistance of others, make modifications to the licensed software and documentation, including, but not limited to, translating, decompiling, disassembling or reverse assembling, reverse engineering, creating derivative or merged works, or performing any other operation on licensed software and documentation to recover any other operation on licensed software and documentation to recover any portion of the program listing, object code or source code or any information contained therein.
- d) Buyer agrees to accept and retain licensed software and documentation in confidence. Buyer agrees to take appropriate action by instruction, agreement or otherwise with Buyer's employees, or agents or other persons who are permitted access to licensed software and documentation to inform said employees, agents or other persons who may come into contact with it of the confidential nature of licensed software and documentation; and to satisfy its obligations under this software license with respect to use, copying, and protection and security of licensed software and documentation.
- e) This software license is effective as of the date of first delivery hereunder and shall continue until terminated by Buyer for any reason whatsoever upon thirty (30) days prior written notice to Seller, provided Buyer ceases using and either returns or destroys Seller software and documentation; or by Seller, if Buyer does not comply with any of the terms and conditions of this software license and Buyer fails to remedy such failure within thirty (30) days after having received notice from Seller of such failure.
- f) Buyer agrees that it will not use the license software and documentation in the performance of a contract, or subcontract, with any Government in a manner so as to affect Seller rights to licensed software and documentation. If Buyer desires to use the licensed software or documentation in the performance of a contract or subcontract with a Government, prior to such use, Buyer shall consult with Seller as to the procedures and use of restrictive markings required to protect the ownership interest of Seller.
- g) This license is subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of the United States and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.

**21. TAXES**

The prices quoted herein do not include sums necessary to cover any taxes, duties or other levies including but not limited to Federal, State, Municipal excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of Products or furnishing of services hereunder. Any taxes or duties that are due and owing hereunder shall be paid by the Buyer. This clause shall survive the acceptance and complete performance of the Order by the parties herein.

**22. UNITED STATES GOVERNMENT CONTRACT**

If the purchase is identified as made for use under a United States Government contract, only those applicable terms and conditions which are required to be included by the Federal Acquisition Regulation and the Department of Defense Supplement (FAR/DFAR), or by Executive Order of the United States Government and such other clauses as may be agreed to between the parties shall be incorporated herein by reference. These Terms and Conditions and the Shrink Wrap/Software License Agreement, where applicable, shall take precedence in the event of any conflict between the Government Contract Provisions, these Terms and Conditions and/or the Shrink Wrap/Software License Agreement.

**23. SEVERABILITY**

If any provision of these Terms and Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

**24. INSOLVENCY/BANKRUPTCY/FINANCIAL DEFAULT**

If the Buyer fails to pay any sum due to Seller hereunder, or shall fail to satisfy any of its obligations hereunder and such default shall continue for ten (10) days after the sending by Seller to the Buyer by a registered letter advising of such default, or if the Buyer by the subject of any proceedings under bankruptcy laws or other insolvency laws or be declared subject to judicial supervision or enter into liquidation, Seller shall have the right to immediately repossess the Product and to terminate the Contract. Upon any such termination, the Buyer shall remain liable for all unpaid charges and sums due to Seller and will pay to Seller for all damages and will reimburse all costs including reasonable attorney's fees and costs, suffered or incurred by Seller as a result of the breach by the Buyer of its obligations under the Contract. The remedies provided herein shall be in addition to all other means and remedies available to Seller.

**25. SETOFF**

All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of such Order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or unites under other transactions with Seller, its parents, affiliates, subsidiaries or other divisions or units.

**26. INDEMNITY**

Buyer will indemnify, hold harmless and defend Seller from and against any claims, suits, judgments, expenses or liabilities of any nature (including without limitation all reasonable attorneys' fees) which are threatened or brought against, or are incurred by, Seller arising from any actions, omissions or misrepresentations of Buyer in the use, promotion, or sale of Products or services provided by Seller under the Contract.

**27. DISPUTE RESOLUTION (FOR CONTRACTS WITH NON-U.S. ENTITIES)**

If either party to the Contract is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to the Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration as in force at the commencement of the arbitration. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to the Contract may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the ICC in Accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators, one arbitrator to be named by Seller, one arbitrator to be named by Buyer, and the third arbitrator (who shall serve as the chairperson of the tribunal) to be appointed by the two party-appointed arbitrators. If the two party-appointed arbitrators fail to appoint a third within 15 days of the appointment of the second of the two party-appointed arbitrators, then either party may request that the chairperson be appointed by the ICC in accordance with its Rules of Arbitration. The place of arbitration shall be Geneva, Switzerland. Any arbitral tribunal constituted pursuant to the Contract shall apply the law of England to all disputes. The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that the Contract and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

**28. DISPUTE RESOLUTION (FOR CONTRACTS WITH U.S ENTITIES)**

If both parties to the Contract are U.S. entities, any controversy or claim arising out of or relating to the Contract or its breach shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but if they cannot so agree, each such party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder. The arbitrator(s) shall permit each of the parties to the Arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in Charlotte, North Carolina. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

**29. APPLICABLE LAW**

The Contract shall be interpreted in accordance with the laws of the State of New York, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from the Contract the United Nations Convention on Contracts for the International Sale of Products, 1980, and any successor thereto.

Orders placed with Dy4 Systems UK Limited, Primagraphics Limited, ACRA CONTROL Limited, Curtiss-Wright Controls (UK) Limited, Penny & Giles Aerospace Limited, and Specialist Electronics Services Limited shall be interpreted in accordance with English law.

**30. COST OF COLLECTION AND ATTORNEY FEES**

In the event any action is taken by Seller to collect amounts billed to Buyer by Seller, Buyer shall be liable for all costs and expenses incurred by Seller in relation thereto, including legal fees.

**31. DOCUMENTATION AND MANUALS**

All documentation, installation, maintenance, and operations manuals will be in English and in Seller format. Seller retains all rights in and to the documentation and manuals. Copying or translating the documentation or manuals, in whole or in part, into another written or electronic format or language is prohibited unless specifically authorized by Seller in writing. Should such copying be authorized, Buyer will reproduce and include all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends. Any translation requirements are Buyer's responsibility.

**32. DISCONTINUED OR OBSOLETE COMPONENTS**

Seller performs sustaining engineering for the benefit of all Buyers. This includes non-contract-specific activities to support improved design and manufacturing, and to replace discontinued and obsolete components. Seller monitors the general marketplace, tries to capture relevant design and availability issues, and then recommends actions to the Buyer. In the event that any component part to complete the future manufacture or future delivery of a Product addressed herein, becomes obsolete or discontinued, Seller shall notify the Buyer and make recommendations on corrective action. Buyer shall determine the proper course of action, fund the necessary changes, and adjust contractual documents and delivery schedules, as appropriate. Other specific actions may be taken if Buyer has contracted for Lifecycle Services.

**33. LIFE SUPPORT AND NUCLEAR APPLICATIONS**

Seller's Products are not authorized for and should not be used as critical components in life support systems or nuclear facility applications without the specific written consent of Seller. As used herein:

- a) Life support devices or systems are those which support or sustain life, whose failure to perform, when properly used in accordance with instructions provided, can be reasonably expected to result in personal injury or death.
- b) Examples of nuclear facility applications are those (1) in a nuclear reactor, or 2) any device designed or used in connection with the handling, processing packaging, preparation, utilization, fabrication, alloying storing, or disposal of fissionable material or waste products thereof.

Buyer's use of Seller's Products for life support or nuclear facility applications is at Buyer's own risk. Buyer agrees to defend, indemnify, and hold Seller harmless from any and all claims, suits, or expense resulting from such use.

**34. STOP WORK ORDER**

a) Buyer may, by written notification to Seller, require Seller to stop all, or any part of the work called for by this Order for a period of ninety (90) days after written notification is delivered to Seller, and for any further period to which the Parties may agree. The notification shall be specifically identified as a Stop-Work Order (SWO) issued under this clause. Upon receipt of the SWO, Seller shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the SWO during the period of work stoppage. Within a period of ninety (90) days after a SWO is delivered to Seller, or within any extension of that period to which the Parties shall have agreed, Buyer shall either (1) cancel the SWO; or (2) terminate the work covered by the SWO as provided for in the Cancellation/Termination clause herein.

b) If a SWO issued under this clause is cancelled or the period of that SWO or any extension thereof expires, Seller shall resume work. Buyer shall make an equitable adjustment in the price or delivery schedule, or both, and the Order modified accordingly if (1) the SWO results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Order; and (2) Seller asserts its rights to the adjustment within thirty (30) days after the end of the period of work stoppage.

c) If a SWO is not canceled and the work covered by the SWO is terminated, such termination shall be in accordance with the Cancellation/Termination clause herein.

**35. EXPORT CONTROL**

Each Party will comply with all export and import regulations, controls, sanctions, laws, and orders, as they may be amended from time to time ("Export Controls"), applicable to the export and re-export of Products, software, technology, or technical data ("Items") or services, of all countries involved in transactions associated with this agreement. Such Export Controls include, but not be limited to, the United States Department of Commerce's Export Administration Regulations ("EAR") and, to the extent applicable, the United States Department of State's International Traffic in Arms Regulations ("ITAR"), regulations and orders administered by the Treasury Department's Office of Foreign Assets Control, the UK Export Control Act administered by the UK Department of Trade and Industry under its Export Control Organization and the Export and Imports Permit Act administered by the Canada Export and Import Controls Bureau.

The Seller shall notify Buyer of any Products that are controlled by the ITAR. If any Products are controlled by the EAR, Seller shall provide Buyer with the applicable Export Control Classification Number ("ECCN"), as well as the ECCNs of any components or parts thereof, if requested. To the extent that such Products or components were specifically designed, developed, configured, adapted or modified for a military application and are controlled under the EAR, Seller shall notify the Buyer of this fact and shall provide the Buyer with written confirmation from the United States Department of State that such Items are not subject to the jurisdiction of the ITAR.

Seller shall be responsible for obtaining all relevant official approvals, licenses and required authorizations for any export conducted by the Seller. Any party conducting any re-export shall be responsible for obtaining any relevant official approvals, licenses, and required authorizations. Each Party shall reasonably cooperate and exercise reasonable efforts to support the other Party in obtaining any necessary licenses or authorizations required to perform its obligations under the Contract.

Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims of loss, damage or injury from and against any suits, actions, or legal proceedings of any kind brought against Buyer due to Seller's non-compliance with the laws of any country. Furthermore, Seller shall, at its own cost and expense, pay all charges of attorneys, and all costs and expenses arising from or related to any of the aforesaid suits, actions or claims, or from any other claim for indemnity made by Buyer against Seller under the Order, including all charges of attorneys costs and expenses incurred by Buyer in connection with the enforcement of this clause against Seller in any suit, action or claim.

**36. PURCHASE OF THIRD-PARTY COMPONENTS, PARTS AND PRODUCTS**

Buyer shall be responsible, in Seller's sole discretion and upon notification to Buyer, for advance payment for all third party components, parts or products specified for inclusion in any Product ordered by Buyer. Such components, part, or products include, but are not limited to, software packages, processing cards/ chips, circuit board products, media drives, and removable storage devices. Buyer may also elect to purchase such items directly from the third-party source and provide them to Seller. In no event shall Seller be liable for any technical support, damages, warranty claims, product failures, system failures or deficiencies related to or caused by any such third-party components, parts or products. Buyer shall be responsible for all excess and non-cancellable and non-returnable ("NCNR") material procured for Buyers order(s). In the event a follow-on order is not awarded within 45 days of final shipment, Seller will invoice Buyer for all excess and NCNR material. Stranded material caused by a Buyer change order will be invoiced upon implementation of the change order.

**37. FURNISHED PROPERTY**

This Order may require the use of property owned by the Buyer, its customer and/or the US Government (Furnished Property). The Buyer shall ensure the timely delivery of such Furnished Property to Seller in the version, condition, and quantity appropriate to support the agreed delivery schedules. Should Seller already be in possession of such Furnished Property for allocation to another order with Buyer, then such reallocation of the Furnished Property shall be stated on the Order with appropriate references to both orders involved; Seller reserves the right to evaluate all such reallocations and to receive equitable compensation, if any, that may be associated with the Furnished Property reallocation, up to and including costs and expenses associated with rework, scrap, rebuild, re-inventory, order cancellation/termination, and any other such reasonable expenses. If Furnished Property received by the Seller is found to be in non-useable condition, either due to variance in version, condition, remaining shelf-life, age and/or quantity, or other reasons, all such costs associated with rectification shall be borne by the Buyer. Seller will manage, maintain, and preserve Furnished Property in accordance with the requirements of this Order and good commercial practice. Except for reasonable wear and tear, Seller will be responsible for, and will promptly notify Buyer of, any loss or damage to Furnished Property. Notwithstanding the foregoing, Seller shall not be responsible for the rework and/or refurbishment of Furnished Property that cannot reasonably be returned to useable form through conventional rework/refurbishment activities.

**38. SURVIVING TERMS**

All terms contained herein, which by their nature, language, or context are intended to survive, such as, without limitation, ownership and confidentiality of proprietary information, export control, and payment terms, shall survive any termination of this Contract.