

**TEXTRON MARINE & LAND SYSTEMS  
DIVISION OF TEXTRON, INC.  
CADILLAC GAGE TEXTRON, INC.**

**INSTRUCTIONS, TERMS, AND CONDITIONS**

The following terms and conditions shall apply to any Subcontract or Purchase Order issued by the Buyer, notwithstanding Seller's pre-printed, standard or non-standard terms and conditions or exceptions:

1. **WARRANTIES** - Seller warrants that all articles, material and work supplied by Seller will conform to the specifications, drawings, samples or other descriptions set forth in the Subcontract/Purchase Order ("Order") or furnished by Buyer, and will be of good material and workmanship and free from defects for a period of one (1) year after date of Buyer's final acceptance. All material or articles ordered are subject to final inspection and approval at Buyer's plant, it being understood that payment, therefore, shall not constitute acceptance. Any materials or articles which are defective upon inspecting Buyer or during Buyer's manufacturing operations will be rejected and returned to Seller at Seller's expense for repair or replacement or, if the Seller cannot make the repair or replacement, in the time required by the Buyer to meet its delivery Schedules, for credit at Buyer's option. If Buyer finds it impractical to return defective materials and articles for repair or replacement within a reasonable time, Buyer may effect cover by purchase or manufacture of similar supplies, and change the reasonable cost thereof to the Seller.
2. **RESPONSIBILITY FOR PROPERTY** -
  - a. The following materials or articles are the property of the Buyer or the United States Government and the Seller shall be liable for all loss or destruction or damage thereto while in its possession or control:
    - (i) All special tools, dies, patterns, jigs, fixtures, materials or articles furnished by Buyer or manufactured or otherwise acquired by Seller and specifically charged to Buyer.
    - (ii) All drawings supplied by Buyer or required by the terms of the Order or the applicable specifications to be prepared for Buyer.
  - b. Such materials and articles shall be marked for identification as Buyer may designate and shall be used only in performance of work for the Buyer unless designated as being proprietary, company private or confidential. Notwithstanding the foregoing, upon written notice to the Buyer and to the extent such use will not interfere with Seller's performance of this or other Orders from Buyer in effect at the time Seller enters into a direct contract with the U.S. Government. Seller shall have the right to use such materials and articles in the manufacture of end items for direct sale to the U.S. Government to the extent the Government has the right under its prime contract with Buyer to authorize such use by Seller, provided that, to the extent practical, Seller prominently identified each end item as being manufactured by the Seller for direct sale to the U.S. Government.
  - c. Upon completion of this Order, Seller shall forward a list of all such articles and materials including scrap to Buyer requesting instructions as to disposition. Buyer will furnish Seller with disposal or shipping instructions with which Seller shall comply. When required, the Seller shall furnish a certificate of compliance. Under no circumstances shall Seller return such articles and materials without instructions from the Buyer. In the event of termination, the Termination article will apply.
  - d. Buyer does not warrant accuracy of tools and fixtures which it furnishes and all work must be in accordance with specifications. Materials and articles sold or furnished by Buyer to Seller for the performance of this Order shall be inspected and accepted by the Seller prior to using or processing them and Buyer's responsibility for latent defects shall be limited to the replacement of original material or its value.
  - e. In conformance with trade custom, the acceptance by Buyer of charges solely for the use of extrusions, forgings, or die casting dies does not convey ownership and Seller agrees without further charge to Buyer, to maintain and/or replace all dies for which such charges are made.
  - f. All specifications, processes and operations which are designated in writing by Buyer as being proprietary, company private or confidential and which result in giving the resulting part a Buyer part number, shall be proprietary to Buyer and shall not be used by Seller or otherwise disclosed in the manufacture, use or sale of a similar part with or without a Buyer part number, except upon direction of the Buyer.
3. **PATENT PROTECTION** - In part consideration of this Order, Seller agrees to indemnify and save harmless Buyer, its successors, assigns and customers, from any and all loss and damage, for on account of infringement of any United States

patent or trademark rights arising from the purchase, use or sale of materials or articles called for by this Order, except insofar as the Order calls for materials or articles to be supplied in accordance with Buyer's drawings or specifications and provided, also that Seller's patent indemnification does not extend to infringements arising by virtue of Seller unapproved combinations or modification of Seller's product by the Buyer and/or its customers. Buyer makes no warranties, express or implied, against claims of infringement arising out of Seller's compliance with specifications or drawings supplied by Buyer.

4. **DELIVERY** - Except as otherwise provided in this Order, the Seller shall be responsible for the supplies covered by this Order until they are delivered at the designated ship to point on the face of this Order, regardless of the point of inspection, and the Seller shall bear all risks as to rejected supplies after notice of rejection. Seller shall not, without prior consent of Buyer, manufacture in advance of reasonable flow time, or deliver any articles in advance of delivery schedule. Buyer reserves the right to return, shipping charges collect, all articles received at Buyer's plant in advance of delivery schedule. Seller shall not be liable for delay in delivery due to causes beyond Seller's control and without Seller's fault or negligence, provided Seller promptly notifies Buyer in writing of conditions which will result in delay.
5. **ACCEPTANCE** - Signature of this Order by Seller constitutes a binding contract between the parties upon the terms and conditions stated herein. No conditions imposed by Seller in acknowledging Buyer's Orders will be binding on Buyer unless accepted in writing by Buyer's authorized representative. The furnishing of any materials, articles or services by Seller under Buyer's Order constitutes acceptance by Seller of all conditions as set forth herein. Except as may be otherwise provided in this Order, the total price includes all Federal, State, and local taxes applicable to the Order and the transactions, property and interests covered thereby. This Agreement shall be construed and interpreted under the laws of the State of Delaware and Seller agrees that it will comply with all applicable Federal statutes, executive Orders, rulings or regulations. This Agreement may not be changed or modified orally.
6. **CHANGES** - No modification of this Order shall be binding on Buyer unless made by formal Purchase Order document signed by Buyer. The only representatives of Buyer empowered to direct changes or to agree to modifications of this Order are the authorized representatives of Buyer's Purchasing Department. No recommendations or suggestions by Buyer or others to Vendor shall be binding on Buyer unless directed in accordance with this Article 6. Buyer may at any time by written notice make changes in drawing and specifications, shipping instructions, quantities, and delivery schedules. Should any such change increase or decrease the cost of, or the time required for performance of this Order or otherwise affect any other delivery schedule will be made. Any claim for adjustment by Seller must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon. Where the cost of property made obsolete or excess as the result of a change is included in the Seller's claim for adjustment, the Buyer shall have the right to prescribe the manner of disposition of such property. Noting in this Article 6 shall excuse Seller from proceeding with this Order as changed.
7. **NOTICE OF LABOR DISPUTES** - Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer. This clause shall be inserted in all subcontracts.
8. **INSPECTION** - The Seller shall provide an inspection system acceptable to the Buyer or the Government. If any inspection or test is made by the Buyer or the Government on the premises of Seller, Seller shall provide all reasonable facilities and assistance for the safety and convenience of inspectors in the performance of their duties. Records of all inspection work by the Seller shall be kept complete and available to the Buyer and the Government during the performance of this Order and for three (3) years after final payment under this Order. All supplies, including without limitation raw materials, components, intermediate assemblies and end products of the Seller and Seller's subcontractors shall be subject to inspection and test by the Government and/or Buyer at all times and places, including the period of manufacture, and in any event, prior to final acceptance. All rights and requirements contained in this clause to the benefit of the Buyer or the Government shall be preserved by Seller, and Seller shall impose all such rights and requirements on its subcontractors and suppliers for the benefit of the Buyer and the Government.
9. **TERMINATION** - The subcontract termination clause set forth in 52.249-1 and 2 of Federal Acquisition Regulations, as in effect on the date of this Order is hereby incorporated herein by reference, except that if there is no Government contract number referred to on the face of this Order, the term "the Government" and its immediately preceding words "and", "or" or "by" whenever appearing in said clause shall be deemed deleted. The provisions of this clause shall not limit or affect the rights or remedies of Buyer stated in other clauses of this Order or provided by law in the event of default or breach by Seller.
10. **ASSIGNMENT** - No assignment of this Order of any monies due or to become due thereunder shall be binding upon Buyer unless and until the Buyer receives notice identifying the rights assigned and the name and address of the assignee together with reasonable proof that the assignment has been made.

11. **COMPLIANCE WITH LABOR LAWS** - By acceptance of this Order, Seller certifies that all work performed under this Order has been or will be performed in compliance with the Fair Labor Standards Act of 1938 and all regulations and orders thereunder.
12. **CASH DISCOUNT** - Unless otherwise agreed, the date used as the basis for cash discount calculations is the date material is received or the date a correct invoice is received, whichever is later. Delays in receiving invoice errors or omissions or invoice or lack of supporting documentation required by the terms of this Order will be cause of withholding settlement without losing discount privilege.
13. **SUBCONTRACTING** - The Seller agrees that it will not enter into a Subcontract or Purchase Order for the procurement of the items covered by this Order in completed or substantially completed form without first securing the written approval of the Buyer as to source.
14. **AUDIT** - If the face of this Order carries a Government Contract Number, the Seller agrees that its Books, records, and Plant, or such parts thereof as may be pertinent to the performance of the procurement involved will at all reasonable times be subject to Inspection and/or Audit by authorized representatives of the Government.
15. **INDEMNIFICATION** - Seller shall indemnify, hold harmless and defend at its own expense purchaser, its customers, employees, agents, contractors, insurers, and subcontractors from and against all suits, claims, demands and actions of every type and character by any party (including third parties) without regard to the cause thereof for any bodily injury, death, or property damage, arising out of or resulting from any conditions or defect in the goods, or from performance of services purchased thereunder, expecting only injury, death or property damages resulting solely from purchaser's negligence and without negligence or fault on the part of the seller or any other party whomsoever. These obligations of Seller shall survive delivery of all goods, completion of all work, or other termination of this P.O.
16. **PAYMENTS** - The Seller shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered or services rendered less deductions, if any, as herein provided in writing. Unless otherwise specified, payment will be made on partial deliveries when the amount due on such deliveries so warrants.
17. **ACCESS RIGHTS TO SELLER FACILITIES** - For the purposes of reviewing the technical aspects of the work being performed hereunder, the Seller agrees that its facilities, or such parts thereof as may be engaged in the performance of this Order, shall at all reasonable times be accessible to personnel of Buyer. Such access shall be arranged by the Buyer, and to the extent practicable, the review of the technical aspects will be accomplished in the presence of the Buyer or the Buyer's designated representative. Seller shall be notified in advance of any such visit.
18. **LIQUIDATED DAMAGES** - The parties recognize that any failure of the Seller to deliver Supplies or perform Services according to contractually-required delivery or performance schedules will result in economic loss to the Buyer which cannot be accurately calculated. It is therefore agreed that the following liquidated damages shall be paid by the Seller as economic loss but not as a penalty. Accordingly, in the event the Seller fails to deliver the Supplies or perform the Services set forth in the Statement of Work of the Subcontract/Purchase Order within the time specified in the Schedule of the Subcontract/Purchase Order or if such delivery or performance is not in accordance with the requirements stated in said Documents, the Seller shall pay the Buyer as fixed, agreed and liquidated damages for late deliveries or performance an amount equal to twenty-five hundredths of a percent (0.0025) of the price of the late Supplies or Services as stated in the Purchase Order for each and every day of delinquency, and provided that liquidated damages shall not exceed fifteen percent (15%) of the Subcontract/Purchase Order Price of the late Supplies or Services.  
  
Payment shall be made by deducting liquidated damages from amounts that would otherwise be due to the Seller under any applicable Subcontract/Purchase Order, if, however, such deduction is insufficient to cover such payment, the Seller shall pay liquidated damages to the Buyer within thirty (30) days after the date of the Buyer's demand.  
  
In the event the Seller's performance under the Subcontract/Purchase Order is delayed for any reason(s) under this Article for ninety (90) days or such longer period as agreed in writing to by the Buyer, the Buyer may terminate this Purchase Order in whole or in part, without penalty or cost. In the event this Subcontract/Purchase Order is so terminated, the Buyer may be entitled to repayment of any payments made to the Seller with respect to such part of the Purchase Order as has been terminated, to the extent that the amount or such payments exceeds the value of Supplies delivered or Services performed under the terminated part of the Subcontract/Purchase Order.
19. **SUPPORT AT BUYER'S FACILITY** - In the event the scheduled delivery of Buyer's end item is jeopardized or delayed in any way by Seller's performance hereunder, Seller shall provide, at no additional cost to Buyer, replacement supplies or items and/or support services at Buyer's facilities or other designated domestic location as directed by Buyer, as required by Buyer within forty-eight (48) hours of receipt of Buyer's notification.

- 20. PERFORMANCE BOND** - If this Subcontract/Purchase Order has a total value of \$500,000 or more, within thirty (30) days after contract award, Seller shall deliver to Buyer a Performance Bond, in a form and through a surety acceptable to Buyer, for an amount equal to fifty percent (50%) of the total value of the Purchase Order. The Performance Bond shall be effective from the award date of the Purchase Order and shall be cancellable sixty (60) days after written notification by Buyer that Seller has completed all its obligations under the Subcontract/Purchase Order.

Before drawing on the Performance Bond, Buyer shall provide to Seller ten (10) days written notice that Seller is in default, specifying the nature of the default. If, within eighty (80) days of the date of the aforementioned notification of default, Seller does not remedy the default or provide satisfactory evidence that Seller is proceeding to diligently cure the default, Buyer may draw against the Performance Bond.

- 21. INSOLVENCY** - If at any time, the Seller becomes insolvent, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay debts as they mature, or if a trustee or receiver of the Seller's or any substantial part of the Seller's assets is appointed by any court or a proceeding is instituted under any provision of the Federal Bankruptcy Act by the Seller or against the Seller and is acquiesced in or is not dismissed within thirty (30) days, or results in an adjudication in bankruptcy, the Buyer may, in addition to exercising any and all other rights it may have, elect to treat such an event as a default by the Seller in the performance of the work hereunder and as a material breach by the Seller.
- 22. DISPUTES** - Pending resolution of any dispute arising under this Subcontract/Purchase Order, Seller shall proceed diligently with the performance of this Subcontract/Purchase Order and, with reference to the matter in dispute, in such manner as may be directed by Buyer.
- 23. COST ACCOUNTING STANDARDS** - In addition to any other remedies provided by law or under this subcontract, if Buyer is subjected to any liability as the result of a failure of the Seller or his lower-tier subcontractors, the Cost Accounting Standards clause in such subcontracts, then the Seller agrees to defend, indemnify and hold Buyer harmless to the full extent of any claim, suit, loss, cost, damage, expense (including attorney's fees), or liability resulting from such failure.
- 24. COMPLIANCE WITH LAWS** - Seller agrees to comply with all applicable local, state and federal laws and Executive Orders, and regulations issued pursuant thereto, and agrees to indemnify and hold Buyer harmless from any claim, suit, loss, cost, damage, expense (including attorney's fees) or liability by reason of Seller's violation of this paragraph.
- 25. PATENT/DATA LICENSE** - If the supplies are to be manufactured or supplied in accordance with drawings and specifications which are furnished by the Buyer and which are not based upon drawings or specifications of the Seller or upon the Seller's design, or if any experimental, developmental or research work is called for or required under the contract, Seller agrees to and hereby does grant to Buyer an irrevocable, nonexclusive, fully transferable, royalty-free license throughout the world to make, have made, use and sell any invention, improvement or discovery (whether or not patentable) that the Seller conceives or first actually reduces to practice in the performance of the contract.