

Purchase Order Terms & Conditions (Agreement)
Whippany Actuation Systems

1. General: These Purchase Order terms and conditions as well as the face of the Whippany Actuation Systems, LLC (“Whippany”) Purchase Order shall be deemed to be exclusive and complete agreement and shall not in any way be modified or waived, except by separate agreement or written amendment, as initiated by a duly authorized representative of Whippany. All communication between Whippany and Seller shall be through an authorized representative of Whippany. Whippany Engineering and technical personnel may from time to time render assistance or provide technical guidance, or affect an exchange of information with Seller’s personnel in a liaison effort concerning the products or services be provided by Seller to Whippany per the terms of this Agreement. Such exchange of information or advice, however, shall not alter nor vest the authority to change the products or services to be furnished hereunder or the provisions of this Agreement between Whippany and Seller, nor shall such change in the products or services or provisions of this Agreement be binding upon Whippany unless said change is incorporated as a written and acknowledged change, pursuant to the “Changes Clause” of this Agreement.

2. Delivery and Performance: Seller’s delivery of products and services to Whippany per this Agreement shall be in accordance with the identified schedule and on-time delivery is a material condition of the Purchase Order. Time is of the essence and failure to meet such delivery schedule shall constitute a material breach of this Agreement. Seller agrees to exert every reasonable effort, including the application of overtime, premium shipments and short lead time purchase of any material or services as required, all at the expense of the Seller, to meet the contracted, firm delivery dates of the Whippany Purchase Order. Seller agrees to notify Whippany immediately if it appears that the product or service delivery schedule may be jeopardized. Furnishing this notice shall not constitute a waiver of any rights by Whippany, but lack of prompt notification at the earliest known point does constitute a breach of the Agreement. Unless otherwise agreed, Seller shall maintain a month’s demand (last 12 months of demand divided by 12) on their shelf.

3. Risk of Loss: Product or Service risk of loss or damage shall remain with the Seller until (a) delivery of the product or service to a common carrier of Whippany, with said product or service suitably packaged, insured, and freight prepaid, if FOB origin is listed on the face of the Purchase Order or (b) delivery to the Whippany-designated location if FOB destination is listed, except that risk of loss or damage to product or supplies that do not conform with the requirements of this Agreement shall remain with the Seller until said conformance is cured.

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4. Specifications: Seller shall comply with all specifications and/or drawings listed on the face of the Purchase Order to which this Agreement is attached by reference as well as all applicable United States Government Specifications. If there are no specifications stated or identified on the face of the Purchase Order, then Seller shall provide Seller's product or services to the applicable commercial standard.

5. Warranty: Seller warrants to Whippany and the customers of Whippany that the products and/or services provided by the Seller to Whippany shall be: (a) free from defects in material and workmanship; (b) shall conform to all applicable specifications; (c) merchantable and suitable for the purpose intended whether express or implied; and (d) free from all liens and encumbrances.

Seller will repair or replace, at Whippany's sole discretion, at Seller's expense, any products or services found to be defective within one year from the date of acceptance by Whippany or initial use by a Whippany customer, whichever is later.

6. Inspection: Seller agrees that its books, records and its facility, or such parts of said facility as may be engaged in the performance of this Purchase Order, shall, at all reasonable times, be subject to inspection and audit by an authorized Whippany representative. Inspection shall not signify acceptance of any work in progress or finished product or service, nor shall such inspection relieve Seller of any warranty obligations hereunder.

7. Rejection: Notwithstanding prior inspection, payment for or use of the product or service, Whippany shall have the right, exercisable within three (3) months of its receipt of the product or service, to reject any product or service which does not conform to the requirements of the Purchase Order and this Agreement. This limitation shall not apply to rejections of product or services for latent defects, fraud or such gross mistakes that amount to fraud. All such rejected product or services shall be returned to Seller, transportation collect (declared at full value, unless advised otherwise) for credit or refund and shall not be replaced by Seller except upon written instruction from Whippany. Whippany may elect to repair nonconforming product or services at Seller's expense. Whippany's rights under this paragraph shall be in addition to and shall not be deemed to diminish and rights under the "Warranty" paragraph herein or other respects of this Agreement.

8. Changes: Whippany may at any time make changes in specifications or drawings as to any product, materials, or services covered by this Purchase Order or by written amendment signed by a Whippany Representative. If such changes result in an increase or decrease in the amount due Seller under this Purchase Order, an equitable adjustment shall be negotiated in the contract price for the products or services effected by the change or the performance schedule or both. Any claim by Seller for adjustment

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hereunder shall be deemed waived unless asserted in writing to Whippany within thirty (30) days from the date the Seller received notification of the change. Nothing in this clause shall excuse Seller from proceeding with this Purchase Order as changed.

9: Restrictions: Seller is prohibited from selling or offering to sell any part number, product, materials or services covered by this Purchase Order to any entity other than Whippany without Whippany's prior written approval. Whippany shall retain sole and exclusive distribution rights for any use of such product, materials, or services, including but not limited to new production, aftermarket sales, and repair and overhaul services. Seller shall not seek Part Manufacturing Approval ("PMA") or Supplemental Type Certificate ("STC") approval from the Federal Aviation Administration (FAA) or any other authority, nor shall Seller perform repair, overhaul, or modification of such items without Whippany's prior approval. This article applies to any Whippany parts, materials, or services, as well as modification or derivatives thereof.

10: Use of data: Seller shall not reproduce, use or disclose, without Whippany's prior written consent, any data, designs, product designs or other business and/or technical information developed, owned or controlled by Whippany except as necessary in the exclusive performance of the Purchase Order consistent with this Agreement for Whippany. (This clause may not apply to property owned by or developed under contract for the government.)

Any technical information disclosed by Seller to Whippany in connection with the product or services supplied pursuant to this Agreement is disclosed on confidential basis.

11. Patent or Copyright Protection: Seller shall indemnify and hold harmless Whippany, its successors, assigns, and customers from and against any claims, liability, loss and damage, including without limitation, costs, expenses, and attorney fees arising out of or relating to any claim of patent, copyright, trademark, or other proprietary right infringement of or in any way related to the product, services or parts thereof, in whole or in part, furnished hereunder or any litigation based thereon.

12. Advertising Announcements and News Releases: Seller shall not, without first obtaining the written consent of Whippany, publish or issue any news releases, advertisement or other, nor make any public announcements or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish Whippany product and/or services as commented herein.

13. Seller's Financial Status: Whippany shall have the right to immediately cancel this Purchase Order or any part thereof without liability in the event of the happening of any of the following or any other

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comparable event: a) in solvency of the Seller; b) filing of a voluntary petition in bankruptcy of the Seller; c) filing of any involuntary petition in bankruptcy against the Seller; or d) execution of an assignment for the benefit of creditors by Seller provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event.

14. Assignment and Set off: Performance of this Purchase Order shall not be assigned by Seller without the prior written consent of Whippany. Whippany shall have the right to reduce or set off against amounts owing hereunder any indebtedness or other claim which Whippany or its affiliated companies may have against the Seller, or any of its affiliated companies, however and whenever arising.

15. Excusable Delays: Neither party shall not be liable for delays of reasonable duration due to acts of God, of the public enemy, acts or demands of the government or any government agency, strikes, fires, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each Party shall notify the other Party in writing of the cause of the delay within five (5) days after the beginning thereof. In the event of such delay of Seller, Whippany shall have the right, at its option and without liability to Seller, to cancel by notice in writing to Seller the portion or portions of this Purchase Order so affected.

16. Relationship of the Parties: Seller and Whippany are independent contracting parties and nothing in the Purchase Order shall make either Party the agent for, or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or create any obligation on behalf of or in the name of the other.

17. Government Compliance: Seller agrees to comply with all federal, state, and local laws, executive orders, rules and regulations and ordinances which may be applicable to Seller's performance of its obligations under this Purchase Order, including, but not limited to, Fair Labor Standards Act of 1938 as amended, and the Equal Employment Opportunity Acts and Occupational Safety and Health Act. Seller shall indemnify and hold Whippany harmless from any costs, fines or damages arising from Seller's failure to comply with this paragraph.

18. Export Licenses: Seller shall be responsible for obtaining all export licenses and permits from known government agencies for shipment to the designated location(s) on behalf of the Purchase Order.

19. Damages: Whippany reserves the right to seek all damages related to nonperformance of the Seller available by law or otherwise. Notwithstanding the above, any costs incurred by Whippany related to repair, rework, modification, scrap, concession consideration, expedited processing, administration,

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penalties, or other damages arising out of late deliveries, defects, or other nonperformance of the Seller shall be recovered from Seller by Whippany. Any such damages shall be detailed by Whippany and amounts due shall either be withheld from future payments to Seller or specifically invoiced by Whippany at Whippany's sole discretion.

20. Cancellation: Whippany reserves the right to cancel all or any part of this Purchase Order, without liability to Seller, if Seller repudiates or breaches any term of this Purchase Order, including: a) Seller's warranties; b) fails to perform services or deliver product as specified by Whippany on the face of the Purchase Order or others, or c) fails to make progress so as to endanger timely and proper completion of services or delivery of the product or services, and does not correct such failure of breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Whippany specifying such failure or breach.

21. Termination: In addition to any other rights of Whippany to cancel or terminate this Purchase Order, Whippany may at its option immediately terminate all or any part of this Purchase Order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Whippany shall pay to Seller the following amounts without duplication: a) the Purchase Order price for all product or services which have been completed in accordance with the Purchase Order and this Agreement and not previously paid for; and b) the actual costs of work-in-progress and raw materials incurred by Seller in furnishing the product or services under this Purchase Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Purchase Order, less, however, the reasonable value or cost (whichever is higher) of any product, services or material used or sold by Seller with Whippany's written consent and the cost of any damaged or destroyed product, service or material. Whippany will make no payments for finished product, work-in-progress, or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases or the Purchase Order nor for any undelivered product or services which are in Seller's standard stock or which are readily marketable. Payments made under this paragraph shall not exceed the aggregate price payable by Whippany for finished product or service which would be produced by Seller under delivery or release schedules of the Purchase Order outstanding at the date of termination. Except as provided in this paragraph, Whippany will not be liable for, nor be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for a loss of anticipated profit, unabsorbed overhead, interest on claim, product development and engineering costs, facility or equipment costs, rental costs, unamortized depreciation

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costs, and general and administrative burden charges. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Whippany with sufficient supporting data to permit Whippany audit and shall thereafter promptly furnish such supplemental and supporting information as Whippany shall request. Whippany or its agents shall have the right to examine all books, records, facilities, work, material inventories, and other items related to any termination claim.

22. Stop Work Order: Whippany reserves the right to stop work under this Purchase Order for a reasonable time without liability.

23. Cumulative Remedies: The rights and remedies herein reserved to Whippany shall be cumulative and additional to any other or further rights available to Whippany by law and/or equity.

24. Governing Law: This Purchase Order is to be construed according to the laws of the State of New Jersey, Seller irrevocably consents to the bringing of any action arising in connection with this Purchase Order or breach thereof in the Courts of the State of New Jersey or in the Federal Courts located therein regardless of whether, absent such consent, personal jurisdiction could otherwise be obtained.

25. Captions: Captions as used herein are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such caption may refer.

26. Liability Insurance: Seller represents that it carries adequate worker's compensation, public liability and property insurance with responsible insurers to cover any work performed by Seller on Whippany's or its customer's property. On request, Seller will furnish proof of insurance. Seller shall indemnify and hold Whippany harmless from and against any and all loss or injury of any kind or nature (including death) to all persons or property, or for claims therefore, including defense costs and attorney fees, resulting from, pertaining to, or arising out of Seller's performance of this Purchase Order regardless of cause or nature of such claims and irrespective of Whippany's negligence. This indemnity shall not, however, apply to losses or claims arising from Whippany's sole negligence.

Seller expressly waives any immunity defense under Workers Compensation laws and will indemnify and hold Whippany harmless from any claim of injury, illness, or death brought by its employees, agents, assigns or subcontractors against Whippany in accordance with the preceding paragraph.

27. Whippany's Property in Seller's Possession: Title to any property furnished by Whippany hereunder shall, at all times, remain in Whippany, but Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto, however caused. Without limiting the foregoing, Seller agrees to

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procure insurance satisfactory to Whippany; insuring to the full insurable value thereof all Whippany's property in Seller's possession against loss of or damage resulting from fire or theft (including extended coverage, malicious mischief and vandalism). Satisfactory evidence of procurement of such insurance shall be submitted to Whippany promptly. Seller further agrees to pay all taxes assessed against Whippany's property or the use thereof while in Seller's possession and to file all necessary declarations and reports in connection therewith. The Whippany material shall be separately stored, identified, and not co-mingled with other material at Seller's facility.

Whippany shall not be liable for any loss, damage, or expense resulting directly or indirectly from any delay in delivery or non-delivery of such property to be furnished by Whippany within thirty (30) days from receipt thereof of Seller.

28. Marketing and Title: If this Purchase Order requires the purchase of product, material and/or supplies not of Seller's standard inventory, all product materials and/or supplies obtained by Seller for use and performance of this Purchase Order shall be marked and identified as material for the Whippany Purchase Order, separately stored and not co-mingled with other product, material and/or supplies at the Seller's facility.

Title to such product, material and/or supplies shall pass to Whippany upon the earlier of the following: payment by Whippany, marking as Whippany materials, or start of fabrication or assembly.

29. No Implied Waiver: The failure of Whippany in any one or more instances to insist on performance of any of the provisions of this Purchase Order and this Agreement shall in no way be construed to be a waiver of any such provisions in the future.

30. Partial Invalidity: If in any instance, any provision of this Purchase Order or this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with these terms.

31. Entire Agreement: This Purchase Order, together with attachments, exhibits or supplements specifically referenced herein constitutes the entire Agreement and supersedes all prior and contemporaneous oral or written representations and agreements between Whippany and Seller.

32. Type of Agreement: This Purchase Order constitutes a firm, fixed price Agreement unless stated otherwise on the face of the Purchase Order.