

CTD Performance Parts Group Terms & Conditions of Sale

1. Entire Agreement. Unless otherwise agreed in a writing signed by authorized representatives of both Buyer and Seller, the sole terms on which the sales or service of the goods described herein are made shall be the Seller terms contained herein, and any different or additional terms proposed by Buyer (including those contained in Buyer's purchase order) are excluded, all previous or contemporaneous, oral or written, statements are superseded, and Buyer's acceptance of the goods shall be deemed acceptance of these Seller terms of sale/service (the "Agreement"). No valid waiver of any term hereof at any time shall be deemed a waiver of any other term at such time or any other time. No change, modification, amendment or waiver of any of the terms hereof shall be binding upon the parties unless made in writing and duly executed by both parties hereto.
2. Payment and Taxes. Unless stated otherwise, prices are stated in U.S. dollars, are subject to change without notice prior to acceptance by Buyer, and do not include taxes or duties of any kind. Payment shall be made net 30 days from date of invoice. Seller reserves the right to require cash payment or other alternative method of payment prior to shipment or completion of work if Seller determines, in its sole discretion, that Buyer's financial condition at any time does not justify continuance of the net 30 days payment term. If payment is not timely made, Seller shall have the right to charge interest on the unpaid balance, which shall accrue from the due date at a rate, which is the lesser of 2% per month, or the maximum legal rate. Buyer shall indemnify Seller against any and all expenses of collection arising from Buyer's non-payment.
3. Shipping & Risk of Loss. Unless designated otherwise, goods are sold FCA (INCOTERMS 2010) Seller's facility. Title and risk of loss to any of the goods shall pass to Buyer upon Seller's tender of the goods to the carrier at Seller's facility. If Buyer fails to reject any goods in writing, within five (5) days of its receipt of those goods, Buyer shall be irrevocably deemed to have inspected and accepted the goods. Seller shall have the right to ship any portion of the goods included in this Agreement as a partial shipment.
4. Warranty. Seller warrants the goods in accordance with the terms of the latest version of its Manufacturer's Warranty and Limitation of Liability (Form 62-10670) in effect at the time of sale. Seller's obligation to repair or replace as stated in that warranty during the warranty period shall be Buyer's exclusive remedy and that written manufacturer's warranty **IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller shall have no liability whatsoever for equipment or component failures or other damages or losses which arise solely as a result of improper installation or incorrect application of the goods.
5. Limitation of Liability. **NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE REMEDY UNDER THIS AGREEMENT SHALL BE LIMITED TO REPAIR OR REPLACEMENT (AT SELLER'S OPTION AND COST) OF THE DEFECTIVE OR NON-FUNCTIONING GOOD OR PART THEREOF. IN NO EVENT SHALL SELLER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF CAUSE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE GOODS PURSUANT TO THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, COLLATERAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES SUCH AS BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF ANTICIPATED SAVINGS OR LOST PROFITS, RECALLS, HARM TO BUSINESS OR BUSINESS REPUTATION, WHETHER OR NOT FORESEEABLE, AND WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, NOTWITHSTANDING ANY INDEMNITY OR OTHER PROVISION TO THE CONTRARY, AND REGARDLESS OF WHETHER BUYER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
6. Changes. Goods in addition to, or different from, those stated herein, and changes in drawings or specifications, shall be subject to Seller's written approval and the terms of this Agreement and shall entitle Seller to an adjustment in the Agreement price and schedule.
7. Cancellation & Returns. Buyer may cancel this Agreement only with Seller's prior written consent, and upon payment of reasonable cancellation charges. Such charges shall take into account costs and expenses incurred, and purchases or contract commitments made by Seller and all other losses due to the cancellation including a reasonable profit. No goods will be accepted for return without Seller's prior written authorization. Returned goods may be subject to a restocking charge. Special order and non-stock goods cannot be returned. Goods may not be returned without Seller's prior written approval.
8. Confidentiality. Buyer shall protect and maintain in confidence this Agreement and all information contained in this Agreement along with all current price lists and discount schedules, parts sales, service, repair and installation literature, materials and documents and any other data or information furnished by Seller which may be or is considered by Seller to be of a proprietary nature.
9. Excusable Delay. Unless specifically agreed in writing, shipment dates quoted are estimates, and Seller does not guarantee a particular date for shipment or delivery of the goods. Seller cannot guarantee same day shipping on any orders received after 6:00pm (Eastern Standard Time). Seller shall not be deemed to be in default nor shall Seller be liable for any losses, damages, or penalties occasioned by late performance, nor for any deviations in performance due to or on account of delays in the delivery of the goods or in the performance of any other act to be performed by the Seller under this order due to any cause to the extent it is beyond Seller's reasonable control and not occasioned by Seller's fault or negligence, including but not limited to supplier delays, strikes, lock-outs, industrial disputes, fire, flood, act of God, war, insurrection, vandalism, sabotage, invasion, riot, national emergency, piracy, hijack, acts of terrorism, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, epidemic, legislation, regulation, order or other act of any government or governmental agency. In case of such delay, deliveries shall be resumed when delays have ceased to exist.
10. Compliance with Laws. By entering into this Agreement, the parties agree to comply with all applicable laws, regulations, rules and guidelines, including but not limited to those dealing with bribery and the export, re-export, or transfer of goods, software and technology. The failure of a party to abide by the obligations of this section will be deemed a material breach permitting the other Party to terminate this Agreement immediately by written notice to the defaulting party without further obligation and without prejudice to any other remedies that may be available to it.

11. Government Sales. The components, equipment and services provided by Seller are "commercial items" as defined in Section 2.101 of the Federal Acquisition Regulations ("FAR"), and the prices of such components, equipment and services are based on Seller's commercial pricing policies and practices (which do not consider any special requirements of U.S. Government cost principles, FAR Part 31, or any similar procurement regulations). As such, Seller will not agree to provide or certify cost or pricing data, nor will Seller agree to comply with the Cost Accounting Standards (CAS). In addition, no federal government procurement regulations, such as FARs or DFARs, shall apply to this Agreement except those regulations expressly accepted in writing by Seller.

12. Export Controls. Buyer acknowledges that the goods and/or services (and any related data) provided hereunder are subject to the laws and regulations of the United States that govern exports and other international trade controls that may restrict transfers of such items to other countries and parties. Buyer and its employees and agents shall not export, reexport, supply or release such items contrary to the laws and regulations of the United States and other countries relating to export trade, or to any country, entity or other party which is ineligible to receive such items under U.S. laws and regulations, including regulations of the U.S. Department of Commerce or the U.S. Department of the Treasury.

13. Assignment. Buyer shall not assign or in any way transfer or dispose of its rights or obligations under this Agreement without Seller's consent in writing, which may be withheld in Seller's sole discretion. Seller may assign its rights or obligations under this Agreement to any affiliate of Seller or United Technologies Corporation in its sole discretion.

14. Claims. Any suits arising from the performance or nonperformance of this Agreement, whether based upon contract, negligence, strict liability or otherwise shall be brought within one (1) year from the date the claim arose.

15. Software License. (a) If Buyer receives any software from Seller with or embedded in a product sold under this Agreement ("Software"), the Software is licensed, not sold, and the use of the Software will be governed by the end user license agreement provided with the product or Software ("EULA"). If a EULA is not provided with the product or Software, then conditioned upon Buyer's compliance with this Agreement (including the limitations set forth below) Seller grants Buyer a personal, non-transferable, non-exclusive, non-sublicensable, limited license to, in accordance with any instructions and documentation provided by Seller: (i) use Software that is embedded within the product solely on that product; and (ii) install Software that is provided with (but not embedded within) the product on a single computer or device for use solely with that product. Buyer acknowledges that the Software is, and may contain, the intellectual property of Seller and that Seller owns all right, title and interest in and to the Software. Seller reserves all rights to the Software except for the rights granted in the EULA or this Provision.

(b) Buyer will not permit or authorize any third party to: (i) disassemble, decipher, decompile, reverse engineer or otherwise attempt to access source code of the Software, except as expressly permitted by applicable law notwithstanding this limitation; (ii) copy, reproduce, modify or create derivative works of the Software; (iii) remove any embedded Software from any product or work around any technical limitations in the Software; (iv) remove any proprietary notices or labels related to the Software that are in the Software or on the product or any packaging; and (v) distribute, rent, lease, lend, transfer, sublicense, disclose or otherwise provide the Software to any third party, except as set forth in the following sentence. If a Buyer is permitted under this Agreement to resell a product containing embedded Software, Buyer may transfer the Software embedded in the product to a third party, provided that prior to the transfer of the product the third party agrees in writing to abide by all the terms of this Provision.

(c) Unless otherwise indicated in a EULA or other agreement between the parties, Seller provides the Software as-is and without warranty.

16. Buyer consents and agrees that Seller may, from time to time, publicize Seller projects with Buyer, including the value of such projects, in all forms and media for advertising, trade, and any other lawful purposes. In no event will these materials include competitively sensitive information, nor shall Seller engage in advertising practices which convey, or are reasonably calculated to convey, a false impression of sponsorship, approval or endorsement of any product or service.

17. Data Privacy.

a. Compliance with Law. The products and/or services being provided require the collection of Personal Information (information and data exchanged in connection with this Agreement that is related to any identified or identifiable natural person or, to the extent of a conflict with applicable law, which is subject to any applicable data privacy laws) to function as intended. Both parties will comply with applicable data privacy laws as pertaining to Personal Information processed in connection with activity under this Agreement. The parties will take all reasonable commercial and legal steps to protect Personal Information against undue disclosure.

b. Rights and Obligations.

1) If Buyer provides Seller with any Personal Information, Buyer will ensure that it has the legal right to do so. Buyer will provide notice to the individuals whose Personal Information it has provided to Seller prior to providing it to Seller.

2) Seller may share Personal Information with Seller's service providers but only in accordance with applicable data privacy laws and with appropriate protections in place.

3) Seller may store Personal Information on servers located and accessible globally by UTC entities and their service providers with appropriate protections in place.

4) To the extent that Seller processes Personal Information under this Agreement, Seller will retain the Personal Information for the term of this Agreement and thereafter as may be required by this Agreement, to protect Seller's legal rights, or as may be required or permitted by law and/or audit requirements. To the extent that Seller processes the Personal Information for purposes separate and apart from this Agreement, Seller serves as a controller and assumes legal obligations as a controller, including for defining the appropriate retention period.

5) If the Personal Information is involved in a Data Breach Incident (set of circumstances that involve actual or a reasonable possibility of unauthorized access to or possession of, or the loss or destruction of, Personal Information), the party on whose system the data was stored is responsible for any notifications and associated costs. Unless prohibited by law or a regulator with jurisdiction over a party, the party making

the notification shall make reasonable efforts to coordinate with the other party to allow for input into the content of a notification before it is made.

6) While performing under this Agreement, if a party learns of any: (i) complaint or allegation indicating a violation of the applicable data privacy laws regarding Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Personal Information; or (iii) inquiry or complaint from one or more individuals in relation to the processing of Personal Information, the party will exercise reasonable efforts to promptly notify the other party in writing, except to the extent prohibited by law, law enforcement, or a regulator with jurisdiction over such party. The parties shall provide reasonable commercial assistance to each other in investigating the matter, identifying the relevant information, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings.

18. Choice of Law. This Agreement and any sales or other transactions arising hereunder or related hereto shall be governed by, and construed in accordance with, the laws of the State of New York (excluding its conflicts of law provisions). The provisions of the U.N. Convention on Contracts for the International Sales of Goods shall not be applicable. A determination that any provision of this Agreement is ineffective or unenforceable shall not impair the enforceability of other provisions contained herein.