



## PURCHASE ORDER TERMS AND CONDITIONS F-840-008 rev. C

### 1. Acceptance

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This purchase order is an offer by Kimdu for the purchase of the goods or services specified, from the party to whom the purchase order is addressed in accordance with and subject to these terms and conditions of the purchase order. This purchase order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Kimdu any letter, form, or other writing or instrument acknowledging acceptance; (b) any performance by Seller under the purchase order; or (c) the passage of ten (10) days after Seller's receipt of the purchase order without written notice to Kimdu that Seller does not accept. This purchase order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the purchase order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the purchase order, unless a separate overriding written contract has been entered into and signed by the parties. The purchase order expressly limits Seller's acceptance to the terms of the purchase order. These terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by the Seller in connection with this purchase order.

### 2. Material Change

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The vendor will notify Kimdu if any of the following takes place:

- Relocating of its manufacturing facility
- Movement or change of equipment for manufacturing, test and/or inspection (Critical changes to equipment include those which could affect capability to produce, inspect or test product)
- Changes in ownership or major personnel changes (Chief Executive Officer, Plant Manager, and Quality Director or Manager) Movements of equipment or manufacturing location also require a written plan indicating how the supplier intends to address the following: Movement or change of critical equipment for manufacturing, test and/or inspection (Critical changes to equipment include those which could affect capability to produce, inspect or test product)

### 3. Counterfeit Parts Avoidance

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A Counterfeit parts Avoidance program is in place that is acceptable to the United States Aeronautical Industry.

### 4. Certificate of Conformance

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A certificate of conformance is required with each shipment against each item of this purchase order. The certification must be signed by a duly authorized officer or quality representative of the seller. This certificate shall be essentially as outlined below and must include the same requirements.

### 5. A Country of Origin

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A Certification of the country of origin is required, with each shipment.

### 6. Supplier Electrostatic Discharge Control Program Requirements

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1. Electrostatic discharge (ESD) protected areas and handling procedures to protect Electrostatic Discharge Sensitive (ESDS) components from damage due to electrostatic energy. *Electrostatic voltages in protected areas shall be below the lowest voltage sensitivity level of the ESDS items being handled.*
2. Periodic training and quality assurance programs for ensuring adherence to the established ESD Control Program. Failure analysis capability shall include as a factor, ESD related failure modes and effects analysis, and recommendations for corrective action.
3. Sub-tier supplier ESD requirements necessary for preventing damage to ESDS items and maintaining an effective ESD Protected Area. The suppliers ESD Control Program is subject to review by BAE Systems, and may be disapproved by BAE Systems whenever the program does not meet the above requirements.

### 7. Test Data Requirements

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The Seller shall maintain data on file for a minimum of six (6) years which shall include the following:

1. Each unit identified in such a manner so as to relate unit with data sheet (normally a serial number).



2. Data sheets must indicate compliance with "Individual Test" section of the applicable specification and shall include the test parameters and actual readings obtained.

## 8. Non-Conformance Rework & Repair

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Rework to a like new functional condition is required. Rework is defined as an action on a nonconforming product to make it conform to the requirements. A like-new functional and cosmetic condition is required. All rework specified shall be in accordance with the original equipment manufacturing specifications (including drawings), except that when such specifications are inappropriate, the manufacturer/rework agency will submit alternative recommendations. The supplier shall not commence work until a change is made to the purchase order authorizing alternative recommendations.

Rework to a serviceable condition is required. A serviceable condition is defined as being capable of functioning and performing in the same manner as identical new articles, although they need not have the physical appearance of newness.

All rework specified shall be in accordance with original equipment manufacturing specifications (including drawings), except that when such specifications are inappropriate, the manufacturer /rework agency will submit alternative recommendations. The supplier shall not commence work until a change is made to the purchase order authorizing alternative recommendations.

## 9. Delivery

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Seller shall deliver the Goods and/or perform the Services at the delivery point (the "**Deliver Location**"), and on the date(s) specified in this purchase order (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full within a reasonable time of receipt of the purchase order. Timely delivery is of the essence. If Seller fails to deliver the Goods or Services in full, on the Delivery Date, Kimdu may terminate the purchase order immediately and Seller shall indemnify Kimdu against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

## 10. Inspection

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Kimdu reserves the right to inspect the Goods on or after the Delivery Date. Kimdu, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If Kimdu requires replacement of the Goods, pursuant to Section 10, Seller shall promptly replace the nonconforming Goods. If Seller fails to timely deliver replacement Goods, Kimdu may replace them with goods from a third party and charge Seller the cost thereof and terminate this purchase order for cause pursuant to Section 11. Any inspection or other action by Kimdu under this Section shall not affect Seller's obligations under the purchase order, and Kimdu shall have the right to further inspection after Seller takes remedial action.

## 11. Cumulative Remedies

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The rights and remedies under this purchase order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in Section 11, Seller will, at its sole cost, replace or repair the Goods or re-perform Services to Kimdu's satisfaction.

## 12. Price and Payment

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The price of the Goods or Services is the price stated on the face of this purchase order (the "Price"). Seller shall invoice Kimdu for the purchase order within thirty (30) days of delivery. Unless otherwise stated in the purchase order, Kimdu shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by Kimdu. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the purchase order notwithstanding any such dispute. Without prejudice to any other right or remedy, Kimdu reserves the right to set off any amount owing to it by Seller against any amount payable by Kimdu to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the purchase order.

## 13. Change Purchase Order

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Kimdu may, from time to time, initiate changes by issuing to Seller written notices (each, a "Change Purchase Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this purchase order. Seller will promptly comply with the terms of any Change Purchase Order.

## 14. Termination

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Kimdu may terminate this purchase order, in whole or in part, for any reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, Kimdu may terminate this purchase order with immediate effect, either before or after acceptance of Goods or Services, if Seller has breached any of the Terms herein. If the Seller becomes insolvent, commences or



has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the Kimdu may terminate this purchase order. If Kimdu terminates the purchase order for any reason, Seller's sole and exclusive remedy is payment for the Goods or Services received and accepted by Kimdu prior to the termination.

## **15. Warranties**

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Seller warrants to Kimdu that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Kimdu's discovery of the noncompliance. If Kimdu gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

## **16. Foreign Object Damage**

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A Foreign Object Damage (FOD) program is in place that is acceptable to the United States Aeronautical industry

## **17. Identification**

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Seller shall defend, indemnify, and hold harmless Kimdu and any subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees (collectively, "Indemnities") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations or Seller's negligence, willful misconduct or breach of the Terms of this purchase order or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Kimdu's or Indemnities prior written consent.

## **18. Confidential Information**

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All non-public, confidential or proprietary information of the Kimdu, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Kimdu to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the purchase order is confidential, solely for the use of performing the purchase order and may not be disclosed or copied unless authorized by Kimdu in writing. Upon Kimdu's request, Seller shall promptly return all documents and other materials received from Kimdu. Kimdu shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; or (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party.

## **19. Insurance**

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Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by the purchase order; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the purchase order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon Kimdu's request, Seller shall provide Kimdu with a certificate of insurance evidencing the coverage specified in this purchase order.

## **20. Compliance with Law**

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Seller warrants and represents to Kimdu that it is in compliance with and shall remain in compliance during performance of this purchase order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with all applicable laws, regulations and ordinances, including, without limitation, the U.S. Mine Safety and Health Act, Occupational Safety and Health Act, Toxic Substances Control Act, and Foreign Corrupt Practices Act or similar laws and regulations if Seller is in a foreign country. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the purchase order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this purchase order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, purchase orders, rules, ordinances and regulations and as a result Kimdu is fined, Seller agrees to pay the fine and costs incident thereto or reimburse Kimdu for payment. To the extent that Seller's Personnel are



required to enter onto Kimdu's site or property, Seller shall ensure that Personnel comply with Kimdu's health, safety and environmental policies and standards.

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## **21. Shipping Terms**

Delivery shall be made in accordance with the Terms of this purchase order. The purchase order number must appear on all documents pertaining to the purchase order, invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity purchase ordered. Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods ("Customs Duties"). Supplier will take all reasonable steps to minimize Customs Duties costs.

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## **22. Taxes**

Unless specified otherwise on the face of the purchase order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Purchase order by the Kimdu.

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## **23. Title and Risk of Loss**

Unless otherwise specified in the purchase order, risk of loss of the Goods remains with Seller and title will not pass to Kimdu until the Goods are delivered to and accepted by Kimdu at the Delivery Location.

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## **24. Force Majeure**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the purchase order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the purchase order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Kimdu may terminate this purchase order immediately by giving written notice to Seller.

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## **25. Waiver and Release of Liens**

Upon Seller receipt of amounts properly invoiced, Seller waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Kimdu, for Goods or Services performed under this purchase order.

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## **26. Relationship of the Parties**

Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

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## **27. Governing Law and Venue**

All matters arising out of or relating to this purchase order shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address for the Kimdu on the purchase order, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state, provincial or territorial courts in the state, province or territory identified in the address for the Kimdu on the purchase order and the courts of appeal from them.

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## **28. Notices**

All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this purchase order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, internationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this section.



### **29. Inconsistent Terms**

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The terms found in this purchase order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of the purchase order.

### **30. Access**

Kimdu and its customers and regulation authoress shall have access to applicable areas the facilities and applicable documentation information at any level of the supply chain

### **31. Services**

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Any Seller that may perform Services represents itself as qualified and able to perform such services. Seller shall perform Services pursuant to the industry standard of care. Kimdu will furnish materials, equipment and machinery only if and to the extent set forth in the purchase order. Seller will report immediately to Kimdu any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of Kimdu's policies or law set forth herein. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to Kimdu that Seller, its employees or agents may damage, destroy or remove while performing or result from performing this purchase order.

### **32. Survival**

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Provisions of this purchase order which by their nature should apply beyond any termination of this purchase order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years.

### **33. Severability**

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If any term or provision of this purchase order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceable shall not affect any other term of this purchase order or invalidate or render unenforceable such term in any other jurisdiction.

### **34. Miscellaneous**

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Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the purchase order without Kimdu's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. No modification, alteration or amendment of the purchase order shall be binding unless agreed to in writing and signed by Kimdu no waiver by any party of any of the provisions of the purchase order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the purchase order by Kimdu shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege here under preclude any other exercise of any additional right, remedy, or privilege.

### **35. Certified Personnel**

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All personnel performing manufacturing or testing for Kimdu products', where certification is available, shall be certified for the process they perform.

### **36. Awareness (Contribution to product or service conformity, product safety, ethical behavior)**

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Seller must show competence of employees including any required qualifications of persons. They must also insure that person s are aware of their contribution to product or service conformity; their contribution to product safety; and know the importance of ethical behavior

### **37. Material Safety**

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SELLER must provide a copy of Material Safety Data Sheet (MSDS) with shipment.



**38.**

Flowdown

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SELLER shall flow down all requirements of this purchase order to its subcontractors.

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