



## **COMMERCIAL PURCHASE ORDER TERMS AND CONDITIONS**

### **1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) Any of the following acts by the Seller shall constitute acceptance: (i) signing and returning a copy of this Purchase Order, (ii) seller provides Buyer with an acknowledgment/email confirmation, (iii) acceptance of payment, or commencement of performance, (iv) shipping of any goods/services. Any of the above shall constitute SELLER's unqualified acceptance of this Contract.

(c) ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO (BY R2C Inc. AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY R2C Inc.

### **2. APPLICABLE LAWS**

(a) This Contract and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of Alabama.

(b) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.

### **3. ASSIGNMENT**

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by R2C, Inc. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if R2C Aerospace is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of R2C, Inc. e against SELLER. R2C, Inc. shall have the right to make settlements and/or adjustments in price without notice to the assignee.

### **4. CHANGES**

(a) The R2C, Inc. Procurement Representative may at any time, by written notice, and Without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) technical requirements and descriptions, specifications, statement of work ("SOW"), drawings or designs; (ii) shipment or packing methods; (m) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of R2C Inc. furnished property; and (vi) if this Contract includes services: (x) description of services to



be performed; (y) time of performance (e.g., hours of the day, days of the week, etc.); and (z) place of performance. SELLER shall comply immediately with such direction.

**(b)** If any such change-causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, R2C, Inc. shall make an equitable adjustment in the Contract price and/or delivery schedule and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

**(c)** Any claim for an equitable adjustment by SELLER must be submitted in writing to R2C, Inc. Procurement Representative within thirty (30) days from the date of notice of the change, unless R2C, Inc. and SELLER agree in writing to a longer period.

**(d)** Failure to agree to any adjustment shall be resolved in accordance with paragraph 10 "Disputes/Jury Waiver." However, nothing contained in this paragraph 4 shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

## **5. CONTRACT DIRECTION**

**(a)** Only the R2C, Inc. Procurement Representative has authority make changes in, to amend, or to modify this Contract. Such changes, amendments or modifications must be in writing.

**(b)** R2C, Inc. program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under paragraph 4 "Changes" and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph 5(a).

**(c)** Except as otherwise provided herein, all notices to be furnished by SELLER shall be sent to the R2C, Inc. Procurement Representative.

## **6. COUNTERFEIT PARTS PREVENTION**

**(a)** Definitions for purposes of this Contract: **(i)** "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new". **(ii)** As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material. **(iii)** "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products, but which purports to sell, broker, and/or distribute such OCM products.



Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or. brokers.

**(b)** SELLER represents and warrants that only new and authentic materials are used in products required to be delivered to Intrepid and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by R2C, Inc.. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER must make available to R2C, Inc. at R2C, Inc.'s request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by R2C, Inc.'s Procurement Representative. SELLER must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. R2C, Inc.'s approval of SELLER request(s) does not relieve SELLER'S responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.

**(c)** SELLER shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and R2C, Inc. approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain.

**(d)** SELLER shall provide copies of such documentation for its system for R2C, Inc.'s inspection upon R2C, Inc.'s request.

**(e)** If the SELLER is providing electronic components/devices only, the following certification applies: Certification of Origin of Product: Acceptance of this Contract constitutes confirmation by the SELLER that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If the SELLER is not the OEM/OCM or a franchised or authorized distributor, the SELLER confirms by acceptance of this Contract that each product supplied to R2C Inc. has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to R2C, Inc. upon R2C, Inc.'s request.

**(f)** SELLER shall flow the requirements of this paragraph 6 to its subcontractors and suppliers at any tier for the performance of this Contract.

## **7. CUSTOMER COMMUNICATION**

R2C, Inc. shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Contract or any Work thereunder or related thereto. Except as required by Jaw, SELLER shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Contract or any Work thereunder or related thereto, without prior approval of the R2C, Inc. Procurement Representative. SELLER shall promptly notify R2C, Inc. of any communications, initiated by



the Customer or any higher tier contractor(s) that affects this Contract or any Work thereunder or related thereto.

## **8. DEFAULT**

(a) R2C, Inc., by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as R2C, Inc. may authorize in writing) to cure any such failure after receipt of written notice from R2C, Inc. Default involving delivery schedule delays shall not be subject to the cure provision.

(b) R2C, Inc. shall not be liable to pay for any Work not accepted; however, R2C, Inc. may require SELLER to deliver to R2C, Aerospace any supplies and materials, and drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. R2C, Inc. and SELLER shall agree on the amount of payment for these other deliverables.

(c) SELLER shall continue all Work not terminated.

(d) If after termination under subparagraph 8(a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

## **9. DEFINITIONS**

The following terms shall have the meanings set forth below:

(a) "Background Intellectual Property" shall mean Intellectual Property owned, controlled or used under license by the SELLER prior to the Effective Date of this Contract (unless delivered as Foreground Intellectual Property to Intrepid under a previous contract). Background Intellectual Property includes, without limitation, Software and related documentation.

(b) "R2C, Inc." means the R2C, Inc. legal entity as identified on the face of the Contract.

(c) "R2C, Inc. Procurement Representative" means the person authorized by R2C, Inc.'s cognizant procurement organization to administer and/or execute this Contract.

(d) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(e) "Customer" means the entity with whom R2C, Inc. has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of



paragraphs 15 (FURNISHED PROPERTY) and 17 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include, any higher tier contractor(s).

**(f)** "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**(g)** "Foreground Intellectual Property" means Intellectual Property conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. Foreground Intellectual Property shall be used by SELLER solely in work for Intrepid. Foreground Intellectual Property includes, without limitation Software and related documentation.

**(h)** "Intellectual Property" means all inventions, discoveries and improvements; all technical data including, but not limited to drawings, specifications, process information, technical reports and all other documented information and the like; and all computer software and related documentation. "Intellectual Property" also includes all common law and statutory rights to the foregoing, including but not limited to, patents, copyrights, mask work registrations, and the like.

**(i)** "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.

**(j)** "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract".

**(k)** "SELLER" means the party identified on the face of this Contract with whom R2C, Inc. is contracting. For the purposes of paragraphs 7 (CUSTOMER COMMUNICATION) and 17 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.

**(l)** "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.

**(m)** "Work" means all required articles, materials, supplies, goods and services, including, but not limited to, technical data and Software constituting the subject matter of this Contract.



## 10. DISPUTES/JURY WAIVER

(a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 10(b) below. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by R2C, Inc..

(b) R2C, Inc. and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, **R2C Inc. AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED; AND R2C, Inc. AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.**

(c) **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, R2C, Inc. AND SELLER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. SELLER AND R2C, INC. FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.**

## 11. ELECTRONIC CONTRACTING

R2C, Inc. and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither R2C, Inc. nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature, or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

## 12. EXPORT CONTROL

(a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751- 2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 24012420, and the Export Administration Regulations, 15 C.F.R. 730-774. SELLER shall obtain all required export licenses or agreements necessary to perform SELLER's Work, as applicable.

(b) Without limiting the foregoing, SELLER shall not transfer any export controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement,



or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by R2C, Inc. and to any such data incorporated in documents generated by SELLER. Additionally, no disclosure of data furnished by R2C, Inc. can be made to persons other than sellers personal. Unless and until R2C, Inc. has considered the request and provided its written approval through contractually authorized channels. SELLER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

**(c)** Export License, Export Agreement, or Applicable License Exemption or Exception. Further, a United States Government export license, export agreement, or applicable license exemption or exemption shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.

**(d)** SELLER shall notify R2C, Inc. if any use, sale, import or export by R2C, Inc. of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.

**(e)** SELLER shall immediately notify the R2C, Inc. Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

**(f)** If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.

**(g)** Where SELLER is a signatory under a R2C, Inc. export license or export agreement (e.g. TAA, MLA), SELLER shall provide prompt notification to the R2C, Inc. Procurement Representative in the event of changed circumstances affecting said license or agreement.

**(h)** SELLER shall indemnify, hold harmless and, at R2C, Inc.'s election, defend R2C, Inc., its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph 12, SELLER shall include the requirements of this paragraph 12 in all agreements with lower tier subcontractors.

**(i)** Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve R2C Inc of its obligations under this Contract. Provided SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by R2C, Inc. without additional cost or other liability.





- (j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with the following:
- (l) The technical data shall be used only in performance of Work required by this Contract; and
- (ii) The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by R2C, Inc. and to any such data incorporated in documents generated by SELLER; and
- (iii) Any rights in the data may not be acquired by SELLER or any other Non-U.S. Person; and
- (iv) SELLER shall return, or at R2C, Inc.'s direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms;
- (v) Unless otherwise expressly directed by R2C, Inc., SELLER shall deliver the Work only to Intrepid or to an agency of the U.S. Government.

### **13. EXTRAS**

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

### **14. FOREIGN CORRUPT PRACTICES PROHIBITION**

- (a) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist R2C, Inc. or SELLER in obtaining or retaining business.
- (b) SELLER shall ensure that all lower tier subcontracts include this paragraph 14.

### **15. FURNISHED PROPERTY**

- (a) R2C, Inc. may provide to SELLER property owned by either R2C, Inc. or its Customer (Furnished Property). Unless previously authorized in writing by the R2C, Inc Procurement Representative. Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in Intrepid or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in





writing. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify R2C, Inc. of any loss or damage to Furnished Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.

(d) At R2C, Inc.'s request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by R2C, Inc..

#### **16. GRATUITIES/KICKBACKS/ETHICAL CONDUCT**

(a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of Intrepid with a view toward securing favorable treatment as a supplier.

(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(I) of FAR 52.203-7 shall not apply.

(c) R2C, Inc. maintains an ethics program that includes a written code of conduct, training and awareness for all employees. R2C, Inc. expects and encourages all its suppliers to embrace ethical values of a comparable standard (including a method for reporting possible violations).

#### **17. INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) SELLER's relationship to R2C, Inc. shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between R2C, Inc. and SELLER or R2C, Inc. and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of Intrepid. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. R2C, Inc. assumes no liability for SELLER personnel.

(b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any R2C, Inc. benefit plan.

(c) SELLER personnel: (i) will not remove R2C, Inc. its Customer's assets from R2C, Inc.'s or Customer's premises without R2C, Inc. authorization; (ii) will use R2C, Inc. or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use R2C, Inc.'s computer networks and equipment, communications resources, programs, tools or routines as R2C, Inc. agrees, all at SELLER's risk and expense, and then only in compliance with applicable R2C, Inc. policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. R2C, Inc. monitor any communications made over or data stored in Intrepid computer networks and equipment or communications resources.



**(d) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT R2C, INC.'S ELECTION, DEFEND R2C AEROSPACE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.**

#### **18. INFORMATION OF R2C INC.**

Information provided by R2C, Inc. to SELLER remains the property of R2C, Inc.. SELLER shall comply with all proprietary information markings and restrictive legends applied by R2C, Inc. to anything provided hereunder to SELLER. SELLER shall not use any R2C, Inc. provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of R2C, Inc.

#### **19 INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to R2C, Inc. without prior execution by R2C, Inc. space of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.

#### **20. INSPECTION AND ACCEPTANCE**

**(a)** R2C, Inc. and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. R2C, Inc. shall perform such inspections in a manner that will not unduly delay the Work SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

**(b)** No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. R2C, Inc.'s final inspection and acceptance shall be at destination.

**(c)** If SELLER delivers non-conforming Work, R2C, Inc. may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; in which case seller shall repair or replace such non-conforming work; or (iii) if seller fails to repair or replace such non-conforming work to make, or have a third party make all repairs; (iiii) if seller fails to repair or replace such non-conforming work R2C Inc reserves the right to repair or replace such nonconforming products. modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.

**(d)** When Work is not ready at the time specified by the SELLER for inspection, R2C, Inc. may charge to the SELLER the additional cost of inspection.



(e) R2C, Inc. may also charge the SELLER for any costs of additional inspection and/or transportation when rejection makes reinspection necessary.

(f) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

## **21. INTELLECTUAL PROPERTY**

Subparagraphs 22(a) and 22(b) are NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

(a) **Foreground Intellectual Property:** SELLER agrees that R2C, Inc. shall be the sole owner of all Foreground Intellectual Property. SELLER hereby assigns, conveys, transfers, and agrees to assign, convey or transfer all right, title, and interest in the foregoing to R2C, Inc., including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at R2C, Inc.'s request and expense, all assistance reasonably required and documentation necessary to perfect title therein in R2C, Inc. SELLER shall maintain and disclose to R2C, Inc. written records of, and otherwise provide R2C, Inc. with full access to, the subject matter covered by this paragraph 21 and that all such subject matter shall be deemed information of R2C, Inc. and be subject to the protection provisions of the paragraph 18 entitled "Information of R2C, Inc.." SELLER shall assist R2C, Inc., at R2C,'s request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this paragraph 21.

(b) **Background Intellectual Property:** SELLER grants and agrees that R2C, Inc. shall have a nonexclusive, worldwide, perpetual, irrevocable, paid-up, royalty free license and right to make, have made, sell, offer for sale, use, execute, reproduce, display, modify, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all Background Intellectual Property necessary for R2C, Inc. to practice or otherwise exercise its rights to Foreground Intellectual Property. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to R2C, Inc. herein.

(c) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.

(d) SELLER shall indemnify, hold harmless and, at R2C, 's election, defend R2C, Inc. and its Customer from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, arising from or related to any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. If an injunction is obtained against R2C,'s use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for R2C, Inc. and Customer the right to continue using the Work or (ii) replace or modify



the Work so it becomes non-infringing. This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

## **22. MAINTENANCE OF RECORDS**

(a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles and good commercial practices to substantiate SELLER's charges hereunder. SELLER shall retain such records for three (3) years from final payment of this Contract.

(b) R2C, Inc. shall have access to records described in paragraph 22(a), and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained. Audit rights shall be available to R2C Aerospace on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

## **23. NEW MATERIALS**

Unless authorized in writing by the R2C, Inc. Procurement Representative, all Work to be delivered hereunder shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

## **24. OPEN SOURCE SOFTWARE**

Without the prior written approval of R2C, Inc., which R2C, Inc. may withhold in its sole discretion, SELLER shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Contract. Before R2C, Inc. will consider providing written approval for the incorporation of such Open Source Software, SELLER shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

## **25. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the R2C, Inc. Purchase Order or subcontract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of Lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be FOB Destination.



## **26. PARTS OBSOLESCENCE**

R2C, Inc. may desire to place additional orders for items purchased hereunder. SELLER shall provide R2C, Inc. with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

## **27. PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) R2C, 's receipt of SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. R2C, Inc. shall have a right of setoff against payments due or at issue under this Contract or any other contract between R2C, Inc. and SELLER.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by R2C, Inc. not to have been properly payable and shall also be subject to reduction for overpayments.

(c) Payment shall be deemed to have been made as of the date of mailing R2C,'s payment or electronic funds transfer.

(d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

## **28. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special terms and conditions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) these terms and conditions; (5) statement of work; and (6) specifications or drawings.

## **29. QUALITY CONTROL SYSTEM**

(a) SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times by R2C, Inc., authorized Customer Quality Representatives. SELLER agrees to include, and to require its subcontractors to include, the substance of this paragraph, including this sentence, in each of its subcontracts under this Contract Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to R2C, Inc. and its Customers.

(c) SELLER agrees to notify R2C, Inc. Procurement Representative of nonconforming material that does not meet the requirements of this order that cannot be reworked to compliance. Approval will be



required by R2C, Inc. Procurement Representative prior to supplier shipment of nonconforming material to R2C, Inc..

- (d)** SELLER agrees to notify R2C, Inc. Procurement Representative with changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations.
- (e)** All hardware, data, other documentation, tooling and equipment required by SELLER during the performance of this order shall be maintained under configuration control. R2C,'s approval of the drawing package shall constitute a baseline release for hardware fabrication. R2C,'s approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the SELLER shall not implement any change in design, processes, controls, parts or proprietary data released to R2C, Inc. thereafter to internal functions or second-tier suppliers without R2C, Inc's prior written approval.
- (f)** The SELLER shall submit Class I Engineering Change Orders (ECO's) to R2C, Inc. for approval prior to implementing any such changes. R2C, Inc.'s approval shall in no way relieve the SELLER from complying with the requirements of the order, nor shall approval relieve the SELLER's technical responsibility for the design. The SELLER shall further submit Class TI ECO's for informational purposes. Any SELLER classification disagreements shall be referred to R2C, Inc. for a final decision.
- (g)** SELLER shall maintain a Foreign Object Debris/Damage (FOD) prevention program. When applicable, SELLER's FOD prevention program shall include:
  - (i)** The review of design and manufacturing processes to identify and eliminate foreign object entrapment areas and paths through which foreign objects can migrate.
  - (ii)** SELLER shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks.
  - (iii)** SELLER shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment.
  - (iv)** By delivering items to R2C, Inc., SELLER shall be deemed to have certified to R2C, Inc. that such items are free from any foreign material that could result in FOD.

### **30. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of R2C, Inc. Procurement Representative.

### **31. SEVERABILITY**



Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### **32. STOP WORK ORDER**

(a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from R2C, Inc., or for such longer period of time as R2C, Inc. and SELLER may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, R2C, Inc. shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with paragraph 4 "Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

### **33. SURVIVABILITY**

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

Applicable Laws  
Disputes/Jury Waiver  
Electronic Contracting  
Export Control  
Furnished Property  
Independent Contractor Relationship  
Information of R2C Aerospace  
Intellectual Property  
Maintenance of Records Parts  
Obsolescence  
Release of Information  
Warranty

### **34. TERMINATION FOR CONVENIENCE**

(a) For specially performed Work: R2C, Inc. may terminate part or all of this Contract for its convenience by giving written notice to SELLER. Upon receipt of such notice SELLER shall immediately: (i) cease work; (ii) prepare and submit to R2C, Inc. an itemization of all completed and partially completed deliverables and services; (iii) deliver to R2C, Inc. deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Contract; and (iv) deliver upon request any Work in process. SELLER shall use reasonable efforts to mitigate R2C, Inc.'s liability under this paragraph 34 by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses





do not exceed the prices set forth in this Contract. R2C, Inc.'s only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed in accordance with the Contract schedule prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of R2C, Inc., using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

**(b)** For other than specially performed Work: R2C, Inc. may terminate part or all of this Contract for its convenience by giving written notice to SELLER and R2C, Inc.'s only obligation to SELLER shall be payment of SELLER's standard restocking or service charge, not to exceed ten (10) percent of the price of the terminated Work

**(c)** In either case, SELLER shall continue all Work not terminated. **(d)** In no event shall Intrepid be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

### **35. TIMELY PERFORMANCE**

**(a)** SELLER's timely performance is a critical element of this Contract.

**(b)** Unless advance shipment has been authorized in writing by R2C, Inc., R2C, Inc. may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

**(c)** If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify R2C Aerospace, in writing, giving pertinent details. This notification shall not change any delivery schedule.

**(d)** In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by R2C, Inc.'s Procurement Representative.

### **36. WAIVER, APPROVAL, AND REMEDIES**

**(a)** Failure by R2C, Inc. to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of R2C, Inc. thereafter to enforce each and every such provision(s).

**(b)** R2C, Inc.'s approval of documents shall not relieve SELLER from complying with any requirements of this Contract.

**(c)** The rights and remedies of R2C, Inc. in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

### **37. WARRANTY**



SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER'S expense. If repair or replacement or reperformance of Work is not timely, R2C, Inc. may elect to return the non-conforming Work or repair or replace Work or reprocur the Work at SELLER's expense. All warranties shall run to R2C, Inc. and its Customers. Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.

End of Document