



## PURCHASE TERMS AND CONDITIONS

**1.0 DEFINITIONS:** The following definitions apply unless otherwise specifically stated:

“Agreement”	means these terms and conditions, purchase orders or purchase agreements issued to Seller referencing these terms and conditions (“Order(s)”), and any pricing agreements, specifications, statements of work, or other papers referenced in such Orders
“Aircraft”	The Production Type Certified Aircraft identified in Attachment A, of this Agreement, for which Products are ordered, and shall not include any derivatives or other aircraft which may share the same basic type certification
“Cirrus”	The legal entity issuing an Order, Cirrus Design Corporation
"Data"	All engineering and tooling designs, assembly tooling designs and information, drawings, engineering specification and information, manufacturing specification and information and quality specification and information, information for special dies, jigs, fixtures, equipment and patterns used for the manufacture of the Products, testing plans and results, qualification plans and results, analysis, certification documentation, manufacturing and quality planning, patterns, software, process plans, and other manufacturing information and documentation, all computer / machine programming
“End User”	The customer paying for and taking title to the Aircraft, or Cirrus, if the Aircraft is put into demonstrator service by Cirrus
“Products”	The items defined in Attachment A hereto, or in an Order including without limitation, raw materials, components, intermediate assemblies and final assemblies

“Intellectual Property”	Inventions, discoveries, patentable subject matter, copyrightable subject matter, mask work or similar intellectual property.
"Order”	Purchase Order, issued by Cirrus with respect to this Agreement and accepted by Seller, as may be modified by a Change Order executed by both Parties
“Parts”	All piece parts, components and assemblies necessary to complete the Products
Parties”	Cirrus and Seller
“Product Support Agreement” or “PSA”	The Product Support Agreement and all attachments included by reference between the Parties, defining the legal, business, and financial relationship to support the Aircraft after delivery to a customer.
“Seller”	The legal entity receiving an Order
“Specification(s)”	Document’s defining the Products in terms of technical requirements setting out, among other things, their form, fit, functions and performances
“Subtier Supplier(s)”	Entities supplying Parts to Suppliers
“Supplier”	Entity supplying Parts to Seller

**2.0 ORDER ACCEPTANCE:** Orders issued hereunder shall become effective when accepted by Seller by written or electronic acknowledgment, or automatically effective if no rejection is submitted by Seller within five (5) days of Order issuance per the terms hereunder. NO PURPORTED ACCEPTANCE OF ORDERS ON TERMS AND CONDITIONS WHICH MODIFY, SUPERSEDE, OR OTHERWISE ALTER THE TERMS AND CONDITIONS HEREOF SHALL BE BINDING UPON CIRRUS. Unless otherwise stated on the face of Orders, the Orders are Cirrus’ requirements to Seller, incorporating order quantity, delivery schedule, place of delivery and the description and Specifications of the Products into the Orders. Seller’s rejection of any Order shall be based solely on the Order not being in compliance with the terms of this Agreement, or any attachments incorporated herein by reference. Seller may not reject Orders that comply with the terms of this Agreement. Notice of Seller’s rejection of an Order and the reason for rejection shall be submitted in

writing to Cirrus within five (5) calendar days from the Order's issue date.

**3.0 DELIVERY:** Delivery must be in strict compliance with the schedule contained in an Order and the Products shall be delivered directly to Cirrus' designated delivery location in accordance with Cirrus' Order(s) schedule(s). Parts fabricated in excess or in advance of Cirrus' requirements contained in an Order are at Seller's risk. Cirrus reserves the right to return to Seller, at Seller's expense, all Products received more than seven (7) calendar days ahead of the required delivery date. Cirrus reserves the right, without loss of discount privileges, to pay invoices covering items shipped in advance of the schedule on the normal maturity after the delivery date specified on the Order. If Seller fails to meet its scheduled delivery dates and Cirrus elects to call for expedited shipments, Seller will pay the difference between the method of shipping specified and the actual expedited rate incurred. Seller shall be responsible for any additional charges resulting from any deviation from Cirrus' shipping procedures and requirements. Should Cirrus accept Products which are not delivered on or before the required delivery date, which option Cirrus reserves, the Seller shall be liable for all reasonable additional costs incurred by Cirrus because of such delay(s) which are not excusable under paragraph 15, Force Majeure, including, but not limited to, additional or premium transportation charges, special handling expenses, and costs to Cirrus to install the Product(s) out of normal manufacturing sequence in addition to other remedies available by law to Cirrus. Title and risk of loss in the Products shall remain in Seller until delivery of the Products to Cirrus. If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Cirrus in writing, giving pertinent details; provided, however, that the receipt of such notice shall be for information purposes only and shall not be construed as a waiver by Cirrus of any delivery schedule or date or of any rights or remedies provided by law or this Agreement. If Seller fails to make delivery promptly and regularly, as required by an Order, Cirrus may, in addition to other remedies available at law, terminate this Agreement and all Orders issued hereunder, or the whole or any part of an Order in accordance with the paragraphs of this Agreement entitled "Termination for Default."

**4.0 SHIPPING INSTRUCTIONS:** Seller agrees to ship Products per the Supplier Standards Guide located [suppliers.cirrusaircraft.com](http://suppliers.cirrusaircraft.com). Seller agrees to prepare and properly box or crate Products for shipment so as to prevent damage in transit, to use its best judgment to select the appropriate carriers to minimize the freight costs and optimize shipping method for each shipment, and to describe the Products on the bill of lading in conformity with appropriate freight classifications, including all documentation relating to the handling, packaging and transporting of hazardous materials if applicable. Any additional charges resulting from failure to comply with this provision shall be charged to Seller. Each container must be marked to identify contents and quantities without opening. Packing lists and certifications, when applicable, must accompany each shipment and must have only one (1) Order per Seller packing sheet. The location of the packing list must be clearly marked on the container. When multiple containers are used, the packing list will show the items in each container. Multiple containers will be numbered consecutively, for example, 1 of 4, 2 of 4,

etc. Cirrus' Order number and plant location must appear on all invoices, packing sheets, delivery tickets, shipping orders and bills of lading. Cirrus assumes no obligation for Products shipped in excess of quantity as shown on an Order.

Seller shall ship the Products in accordance with the instructions and shipping terms contained in the Cirrus Orders.

## **5.0 INVOICING AND PAYMENT TERMS:**

**5.1 Invoicing:** Individual invoice showing Order number and Order item number must be issued for each shipment applying against an Order. One copy of each invoice must be rendered with prices and extensions. Invoices shall be mailed or transmitted within three (3) days after shipping date. Invoice date shall not precede shipment date. Rejections, delays in delivery or delivery in advance of required delivery date, and invoices and/or shipping documentation errors and/or omission will be considered just cause for withholding payment without loss of cash discount privileges. Unless otherwise specified, the price set forth in an Order shall include all charges for Seller's packing and crating and for cartage to IncoTerms 2010 EXW (USA domestic) or DDP (International) designated point.

**5.2 Commercial Invoice:** Seller shall provide a "Commercial Invoice" for all Products imported to Cirrus, which shall contain the description, value and country of origin of the Product being imported, and the appropriate import classification. The Commercial Invoice shall be signed by the Seller, Seller's shipper or Seller's agent as required for Customs entry and shall be prepared in accordance with 141.86 of the U.S. Customs Regulations. Any inaccurate or misleading statement of fact in a required document may result in delays in release, detention of Products, increased review by import specialists or penalties against the importer. Even if the inaccuracy or omission was unintentional, the importer may be required to establish that it exercised due diligence and reasonable care. Seller is responsible for and agrees to indemnify Cirrus for any and all fines, damages, losses, expense, attorney fees, court costs, etc., that result from Seller's failure to comply with the Commercial Invoice requirements.

**5.3** Payment terms are 2%/20, Net 60 days after receipt of invoice date.

**6.0 INSPECTION; NON-CONFORMING PRODUCTS:** Seller agrees to inspect and test all Products furnished in performance of this Agreement to ensure compliance with the



Specifications and other requirements of an Order. Test reports and/or certifications shall be retained by Seller for ten (10) years after shipment of Products. Upon reasonable advance notice from Cirrus, Seller agrees to permit inspection and testing by Cirrus and/or any recognized certifying authority of all Products furnished in performance of this Agreement. All Products shall be received subject to Cirrus' inspection and acceptance or rejection. Acceptance by Cirrus or payment for Products does not relieve Seller of warranty obligations or liability for latent defects, fraud or such gross error or defects as amount to fraud. Cirrus shall have the right to reject any Products found not to be in compliance with the Specifications or other requirements of this Agreement. For any rejected Products, Seller shall bear the responsibility for all freight costs associated with the return of such Products (and the risk of loss or damage to the Products during such return) and any Cirrus labor or other charges directly related to such non-conforming Products. The obligations of this Paragraph shall survive the cancellation, termination or completion of any Order.

**7.0 LIMITED WARRANTY:** Seller expressly warrants that all Products, Parts and services furnished hereunder shall (1) conform to all Specifications, drawings, specified or adopted by the Parties and to all other requirements of this Agreement; (2) be free from defects in material and workmanship and, to the extent such Products and Parts are not manufactured pursuant to detailed designs of Cirrus, be free from defects in design; (3) be free of operational or functional problems caused by computer software, processes or systems; and (4) be free from defects in title and any claims of any third parties. Such warranties, together with Seller's service warranties and guarantees, and as stated in the Product Support Agreement, (if applicable), shall survive inspection, test, acceptance of, and payment for the Products and shall run to Cirrus, its successors, assigns, customers at any tier, and all End Users. The Product Support Agreement, (if applicable), and any subsequent revisions to said Product Support Agreement are hereby incorporated into this Agreement by reference. Except for latent defects, notice of any defect or nonconformity shall be given by Cirrus to Seller within thirty-six (36) months after delivery of the Aircraft to the first End User. In the event the Products and/or Parts are defective and/or nonconforming, Cirrus shall notify Seller in writing and, where possible, return the defective/non-conforming Products and/or Parts to Seller. The return to Seller of any defective or non-conforming Products and delivery to Cirrus of any corrected or replaced Products shall be at Seller's expense. Products, which have been rejected or required to be corrected, shall not thereafter be tendered for acceptance unless the former rejection or correction requirement is disclosed in writing. The obligations of this paragraph 6.0 shall survive the cancellation, termination, or completion of any Orders. The terms of this paragraph 7.0 are not intended to control third party claims against Cirrus. In the event of third party claims against Cirrus relating to Products furnished pursuant to these Terms and Conditions, the obligations of Seller to Cirrus are controlled by paragraph 17.0 (Indemnity/Insurance) herein.

## **8.0 CHANGES; FORECASTS; ORDERS:**

- 8.1** Changes: Cirrus shall have the right at any time to make changes in one or more of the following: (i) drawings, designs or Specifications; (ii) method of shipment or packing; and (iii) place or time of delivery or performance and/or quantity of Products ordered. Notices of changes hereunder shall be delivered to Seller in writing. With respect to any required changes in drawings, designs or Specification that affects the price of the Products, Seller shall present to Cirrus a statement of claim within thirty (30) calendar days and an itemized statement of claim against Cirrus within sixty (60) calendar days after receipt of notice of such changes. Cirrus and Seller shall mutually agree to the cost, if any, of any changes in drawings, designs or Specification, prior to implementation of such changes.
- 8.2** Forecasts: Within thirty (30) days after the Effective Date, Cirrus shall submit to Seller, upon request, a non-binding, good faith initial forecast of the quantities and delivery dates of the Products estimated to be required on a monthly basis during the following twelve (12) month period, and thereafter Cirrus shall submit, no later than the end of each successive calendar quarter during the Term, a non-binding twelve (12) month rolling forecast (each, a “Forecast”), organized by month and Products. Cirrus shall make all Forecasts in good faith given current market and other information available to Cirrus, but no Forecast is binding.
- 8.3** Orders: To order Products hereunder, Cirrus shall submit written Orders for Products to Seller identifying (a) the quantity of Products ordered, (b) required delivery dates and special shipping instructions and (c) unit price and total authorized price of the Order. These Orders will be issued quarterly and will provide a 90-day firm Order. Cirrus shall be liable for the costs associated with the Products ordered within this 90-day schedule (the “Base Schedule”). Although the cost liability for the Base Schedule remains in place (subject to terms of Paragraph 15.2), Cirrus may make schedule updates to the delivery schedules in accordance with the terms of Paragraph 7.4 below.
- 8.4** Rescheduling or reductions in the rate of delivery will be accepted by Seller at no additional charge:
- 8.4.1** Cirrus shall declare within the context of any production purchase Order, as well as subsequent follow-on Orders, a “Base Schedule” of delivery requirements. The “Base Schedule” shall be for a period of 3 months. The 3-month commitment period shall be a rolling window until the next Order is issued.

- 8.4.2** Cirrus shall retain its right to reschedule at no charge, Product quantities within the second (2nd) through the third (3rd) months of the Base Schedule, providing the reschedule does not reduce the monthly quantity to less than one (1) ship set for delivery in any month between the second (2nd) and third (3rd) full calendar months from the date of notice. The quantity by which each month is reduced must be rescheduled for delivery.
- 8.4.3** Any Product quantities scheduled for delivery within the first (1st) full calendar month of the Base Schedule shall not be changed or rescheduled.
- 8.4.4** The Products ordered may be rescheduled in accordance with this clause but limited to the requirement that the Products ordered in the Base Schedule shall remain as a firm requirement. Notwithstanding anything above, in the event of Termination under Section 15.2 below, the provisions of Article 15.2 will govern Cirrus's liability.
- 8.5** Seller will accommodate increases in the rate of delivery at no additional charge to Cirrus to the degree that such increases can be achieved without incurring additional cost such as special expedite or overtime premiums.

**9.0 CONFIGURATION CONTROL:** With the exception of mandatory changes directed by a recognized Governmental Agency and not excluding the terms and conditions of this Agreement, Seller shall make no change in design, manufacturing or assembly processes or source of supply which would affect form, fit, function, weight, or performance of the Products ordered hereunder without the express, written approval of Cirrus. In the event the Seller proposes such a change, the Seller shall provide a copy of the proposed revision and supporting Data to Cirrus for written approval. These design changes shall include the reason for and description of change, serial number(s) affected and effective date of the change. Changes requiring the issuance of a service bulletin or service information letter shall be fully documented including illustrations as applicable. Should Seller fail to obtain Cirrus' written approval prior to delivering such modified Product(s), Cirrus may reject the Product(s) and seek all applicable rights and remedies; and the delivery of non-conforming Products shall be treated as if delivery has not occurred, and Seller shall be considered delinquent to its obligation to delivery in strict compliance with the schedule contained in an Order. The obligations of this Paragraph shall survive the cancellation, termination, or completion of any Orders or this Agreement.

**10.0 EQUIPMENT, TOOLING AND FURNISHED PROPERTY:**

- 10.1** Unless otherwise agreed in writing, Seller shall furnish, at its own expense, all special dies, tools, jigs, fixtures, equipment and patterns used in the development

and production of the Products, the same to be kept in good condition and to be replaced by Seller when necessary without expense to Cirrus.

- 10.2** Unless otherwise agreed in writing, any special dies, tools, jigs, fixtures, equipment, patterns, drawings, and other manufacturing data (including all copies of reprints thereof) and materials furnished by Cirrus to Seller, or specifically paid for by Cirrus, shall be the property of Cirrus and subject to removal at Cirrus' request, and shall be used only in filling Orders from Cirrus. All Cirrus-owned tooling shall be marked "*Property of Cirrus Aircraft*" in a conspicuous place using a permanent method such as stamping, engraving, etching, stenciling, etc. Seller is obligated to ensure proper care and maintenance of Cirrus furnished tooling, and to notify Cirrus immediately if tooling damage, significant wear, or loss occurs. If Cirrus-owned tooling is damaged, Seller shall replace the tooling, without cost to Cirrus, or Cirrus shall receive a full refund of the costs of said tools from Seller within thirty (30) days. Prior to relocating any Cirrus-owned tooling from Seller's original manufacturing facility assigned to perform the requirements of this Agreement, Seller shall obtain written authorization from Cirrus.

## **11.0 INDEMNIFICATION:**

- 11.1** Seller shall defend, indemnify and hold Cirrus and its affiliates, and their respective directors, officers, employees, and representatives (and each of their successors and assigns) harmless from and against any and all claims, demands and causes of action asserted by a third party for any loss or damage to tangible property, any financial losses, or injury or death of any person, to the extent such damage, injury or death is caused by Seller's violation of this Agreement or the alleged negligence or other wrongful acts or omissions of Seller or its agents, representatives or Subtier Suppliers, including any such claims, demands or causes of actions asserting that such loss or damage was caused or allegedly caused by any design or manufacturing defect, negligence or failure to warn related to the Products delivered to Cirrus, including components thereof.

Seller further agrees that it will, at its own expense (including but not limited to the payment of attorneys' fees, court costs and any bond or appeal from any adverse judgment), indemnify, defend and hold harmless Cirrus against any and all claims, charges or lawsuits asserted or instituted by any party against Cirrus or its customers for alleged infringement of any patent, copyright, mask work, trade secret, trademark, or other intellectual property right, proprietary right, or similar right caused by or relating to the manufacture or use of Products manufactured by or for Seller and furnished to Cirrus in the performance of an Order, or relating to



the manufacture or use of such Products in combination with other articles of manufacture as intended or as contemplated by this Agreement or as is otherwise recommended by Seller, except where such claims, charges or lawsuits arise from Seller's manufacture of the Products pursuant to drawings or designs furnished to Seller by Cirrus, provided Cirrus gives Seller reasonable notice in writing of any such claims or charges, and of the institution of any such lawsuit of which it has knowledge and provides Seller with control over the defense and/or settlement of the applicable claims. In the event of any claim that any Products furnished hereunder infringe any patent, copyright, trademark or similar right Seller may, at its option and expense: (i) procure for Cirrus and its customers the right to continue using the Products, or (ii) replace or modify the Products so that such Products become non-infringing provided the replaced or modified Products comply with the Specification for the Products and Seller remains responsible for all other commitments regarding the Products contained in this Agreement, including the PSA (if applicable). Seller further agrees that in case of any settlement including the payment of any monies, Seller will pay all monies due under the settlement. Seller further agrees that in case of a final judgment or award of damages or other monetary relief in any such lawsuit, it will pay such judgment or award and will indemnify and hold harmless Cirrus and all persons claiming under Cirrus in respect to such award, court costs, attorney fees, and expenses incurred by reason thereof. Seller shall notify Cirrus in writing of each such notice or claim of which Seller has knowledge.

- 11.2** Cirrus shall defend, indemnify and hold Seller and its affiliates, and their respective directors, officers, employees, and representatives (and each of their successors and assigns) harmless from and against any and all claims, demands and causes of action asserted by a third party for any loss or damage to tangible property, any financial losses, or injury or death of any person, to the extent such damage, injury or death is caused by Cirrus' violation of this Agreement or the alleged negligence or other wrongful acts or omissions of Cirrus or its agents or representatives, including any such claims, demands or causes of actions asserting that such loss or damage was caused or allegedly caused by any design or manufacturing defect, negligence or failure to warn related to the Aircraft (other than pertaining to the Products).
- 11.3** A Party entitled to be indemnified under the foregoing sections (the "Indemnified Party") shall promptly notify the other Party liable for such indemnification (the "Indemnifying Party") in writing. Failure to promptly notify the Indemnifying Party of any such claim shall not relieve the Indemnifying Party of any such duty to so indemnify except to the extent that the Indemnifying Party can demonstrate actual loss and prejudice as a result of such failure. The Indemnified Party shall

cooperate with the Indemnifying Party in the provision of any such defense by providing to the Indemnifying Party all such information, assistance and authority as may reasonably be requested by the Indemnifying Party at the Indemnifying Party's expense.

**11.4** The obligations of this Paragraph shall survive the cancellation, termination, or completion of any Order.

**12.0 NOTICE OF LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of an Order, Seller shall immediately give notice to Cirrus, including all relevant information. Delivery delays caused by labor disputes shall be governed by the paragraph of this Agreement entitled "DELIVERY".

**13.0 COMPLIANCE WITH LAWS:**

**13.1** Seller agrees to comply with all applicable local, state and federal laws, orders, directives and regulations heretofore or hereafter promulgated in conjunction with manufacturing and providing the Products, including, but not limited to, those found in and 41 CFR Chapter 60 requiring equal opportunity and affirmative action without regard to race, color, religion, sex, national origin, presence of a disability or status as a special disabled veteran or Vietnam era veteran and to the extent required by law, comply with provisions of 29 CFR part 470. If Seller fails to comply with the provisions of this Paragraph, Cirrus may, by written notice to Seller, terminate this Agreement as upon a default in accordance with the "Termination for Default" paragraphs of this Agreement in addition to any other rights or remedies provided by law.

**13.2** Seller represents and warrants that neither it nor any of its Subtier Suppliers will utilize child, slave, prisoner or any other form of forced or involuntary labor or engage in abusive employment or corrupt business practices, in the performance of this Agreement. At Cirrus' request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Cirrus harmless from and against any liability claims, demands or expenses (including attorney's fees and other professional expenses) arising from or relating to Seller's non-compliance with the terms of this Agreement.

**14.0 STOP WORK ORDER:** Cirrus may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by an Order for a period of up to ninety (90) days after the notice is delivered to Seller. Upon receipt of a Stop Work Order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs

allocable to the work covered by the Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period to which the Parties shall have agreed, Cirrus shall either cancel the Stop Work Order, or terminate the work covered by the Order as provided in the "Termination for Default" or the "Termination for Convenience" paragraphs of this Agreement, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment may be made in the delivery schedule or prices hereunder, or both, and the Order shall be modified in writing accordingly, if the Stop Work Order results in an increase in the time required for the performance of the Order or in Seller's costs.

## **15.0 FORCE MAJEURE:**

**15.1** In the event of Cirrus' failure to meet any of its obligations under this Agreement, where such failure is the result, in whole or part, of any labor dispute (except for strikes, lockouts or labor disputes isolated to the Party claiming a force majeure Event), war, riot, insurrection, vandalism, fire, flood, earthquake, accident, storm, epidemic, pandemic, act of God or government, or any other cause beyond such Cirrus' reasonable control (for purposes of this section, a "force majeure event"), such Cirrus' obligations hereunder shall be suspended (except for the obligation to make payments for amounts owed) to the extent of the force majeure event, except as provided hereafter. For the avoidance of doubt, force majeure events shall not include (a) a Cirrus' financial inability to perform under this Agreement, including the ability to obtain, or the cancellation of, financing for the Project, (b) a failure of equipment except if caused by a force majeure Event, (c) unavailability of raw materials, components, or replacement or spare parts except if caused by a force majeure Event, (d) sabotage by employees or any contractors, subcontractors or suppliers of the Party claiming the Force Majeure Event or (e) any Cirrus' failure to obtain or maintain any required governmental certification, approval or permit.

**15.2** Cirrus shall provide notice of declaration of force majeure event to Seller, using the most expedient means available under the circumstances, stating the particulars of the event. Cirrus shall use all diligent efforts to promptly resume normal performance hereunder after the occurrence of any force majeure event. If the force majeure event continues for longer than thirty (30) calendar days, then Seller, at its sole option, may terminate any individual Order in whole or in part without any obligation or liability of Cirrus except for the obligation to make payments for amounts owed prior to force majeure notice receipt.

## **16.0 TERMINATION AND SETTLEMENT:**

## **16.1** Termination for Default

**16.1.1** Cirrus may, by written notice of default to Seller, immediately terminate this Agreement and all Orders issued hereunder, or the whole or any part of an Order, if Seller fails to make delivery of the Products or to perform the obligations of this Agreement or an Order within the time specified herein or any extension thereof. In addition, if Seller fails to satisfy any of the other requirements of this Agreement or an Order, or so fails to make progress as to endanger performance of an Order in accordance with its terms and conditions, and does not cure such failure within a period of thirty (30) calendar days (or such longer period as Cirrus may authorize in writing) after receipt of notice from Cirrus specifying such failure, then Cirrus may terminate this Agreement in its entirety or, alternatively, the whole or part of an Order.

**16.1.2** In the event Cirrus terminates this Agreement and all Orders issued hereunder or, an Order in whole or in part as provided in paragraph 16.1.1, above, Cirrus shall have no further obligation to Seller under the terminated Agreement or terminated portion of the Order, and Seller shall be liable to Cirrus for any costs incurred by Cirrus for recertification and tooling.

**16.2** Termination for Convenience. Except as expressly stated in this Agreement, Cirrus may, at any time by written notice, terminate this Agreement and all Orders issued hereunder or all or any part of an Order for Cirrus's convenience, in which event Seller agrees to stop work immediately and to notify any subcontractor(s) to stop work, and protect and preserve property in its possession in which Cirrus has an interest or financial obligation. If this Agreement is terminated for Cirrus's convenience such cancellation shall not constitute a default. The following terms shall apply to inventory purchased or committed to by Seller as a result of cancellation of the Order from Cirrus:

**16.2.1** Seller will make reasonable good faith efforts to return unneeded components to its suppliers or use components in other manufacturing needs;

**16.2.2** Cirrus will be responsible for Seller's actual, reasonable, and substantiated costs incurred under the cancelled Order prior to the date of cancellation and which cannot be returned or used; and

**16.2.3** Upon full payment by Cirrus of the amounts and prices set forth in this Agreement, Cirrus shall receive ownership of those components and



Products affected, and Seller shall deliver such Components and Products to Cirrus as instructed.

Cirrus shall have no other financial responsibility to Seller under this provision, including no responsibility for any special or consequential damages, including anticipated lost revenues or profits.

- 16.3** Rights and Remedies. The rights and remedies of Cirrus and the obligations of Seller provided in this Paragraph 16 shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity or under this Agreement. Any termination of this Agreement or any Order issued hereunder shall not relieve Seller of any obligations and liabilities which may have arisen under any of the terms and conditions of this Agreement prior to such termination.

## **17.0 PRICING:**

- 17.1** Cirrus will not be bound to any prices or delivery schedule to which it has not specifically agreed to in writing. Each individual Order may not be invoiced at a higher purchase price than shown on the face of that Order. If no price is shown, the goods delivered or service rendered shall be invoiced at the price last quoted, last paid or the prevailing market price, whichever is lower. No additional charge will be allowed for packing, crating, drayage or storage. Seller represents that the prices set forth herein are no less favorable than those offered to any other customer of Seller. In the event Seller's pricing structure is revised downward resulting in the prices of goods or services being higher than those offered to any other customer of Seller, Seller agrees to retroactively adjust the prices set forth herein downward so that Cirrus is not required to pay more than any other customer of Seller at any point in time. Seller shall pay all taxes, duties, dues and other related charges imposed under any present or future law, whether now or hereafter in force, up to the goods' delivery point stated in each individual Order, or as a result of, or in connection with the services or goods furnished under each individual Order. Unless otherwise specified, prices on each individual Order include all shipping and logistics fees as stated on each individual Order and are exclusive of state sales and use taxes. All prices include a standard thirty-six (36) month warranty for parts and labor from the date of delivery of parts to Cirrus.

- 17.2** Fleet Sales Participation: Seller agrees as long as the Aircraft is in production, Seller will participate in Fleet sales discounts for the Aircraft. Seller's participation shall be in the form of a 15% discount for all Fleet sales payable upon delivery of the Aircraft, in which the Products are installed.

## **18.0 INSURANCE:**



**18.1** Seller shall at all times maintain aviation products liability insurance covering bodily injury, property damage, contractual liability, products liability, and completed operations in such amounts as are reasonably necessary to insure against standard risks to their operations, but in no event less than the following amounts and under the following terms:

**18.1.1** Seller shall at all times maintain at a minimum: (A) \$150,000,000 aviation liability insurance covering bodily injury, property damage, contractual liability, products liability, and completed operations; (B) Workers' Compensation as required by state statutes and employer's liability insurance; and (C) \$1,000,000 automobile insurance.

**18.1.2** Unless otherwise agreed in writing by the Parties, all insurance policies provided under this Agreement will be "occurrence" policies and not "claims made" policies. Where permitted by law or regulation, it is agreed that such policies shall contain waivers of the insurer's subrogation rights against the other Party, but only with respect to loss to the extent caused by the legal liability of the primary insured.

**18.1.3** Prior to the commencement of any performance under this Agreement and on request, Seller shall provide Cirrus with evidence that the insurance coverage required hereunder is in full force and effect. In the event any such insurance renews or is terminated during the course of performance, Seller will promptly provide Cirrus with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance will be in the form of a standard Certificate of Insurance or other form of evidence of insurance acceptable to Cirrus and shall contain sufficient information to allow Cirrus to determine whether there is compliance with these provisions. Such evidence of insurance shall be accompanied by copies of any additional insured endorsements necessary to achieve compliance with the requirements of this Agreement.

**18.1.4** Insurance terms not otherwise defined in this Agreement will be interpreted consistent with customary U.S. insurance industry usage.

**18.2** The obligations of this Paragraph shall survive the cancellation, termination, or completion of any Order

**19.0 GRATUITIES; POLICIES AND PROCEDURES:**

**19.1** If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Seller, or any agent or representative of Seller, to any employee of Cirrus with a view toward securing favorable treatment with respect to the awarding or

performing of any Order, Cirrus may, by written notice to Seller, terminate all Orders as upon a default in accordance with Paragraph 16.1 of this Agreement in addition to any other rights or remedies provided by law.

**19.2** Seller, its employees, representatives and agents shall comply with all of Cirrus' rules, regulations, policies and procedures while on Cirrus' premises or in the company of any of Cirrus' employees. If Seller, its employees, representatives or agents violate Cirrus' rules, regulations, policies or procedures, Cirrus may, by written notice to Seller, terminate all Orders as upon a default in accordance with, Paragraph 16.1 of this Agreement in addition to any other rights or remedies provided by law.

**20.0 APPLICABLE LAW AND VENUE:** Cirrus and Seller expressly agree to exclude the United Nations Convention on Contracts for the International Sale of Products, 1980, and any successor thereto from application to this Agreement. This Agreement and all duties and obligations arising pursuant to this Agreement shall be governed by the laws of the State of Minnesota, excluding the conflicts of laws rules of that State, as though this Agreement was made and performed entirely within that State. Notwithstanding the preceding sentence, any and all matters relating to intellectual or industrial property rights will be governed by the substantive laws of the United States of America. Any dispute arising out of or relating to the making or performance of this Agreement shall be resolved in the State or Federal courts in the State of Minnesota. Each Party hereby: (a) agrees to submit to the in persona jurisdiction of such courts in the State of Minnesota (b) waives the defense of an improper or inconvenient forum; (c) consents to service of process upon it by notice; and (d) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any jurisdiction(s) where the Party may be found, by suit on the judgment or in any other manner provided by law.

**21.0 INTERNATIONAL REQUIREMENTS:**

**21.1** Origin of Products and Parts

**21.1.1** Products and Parts originating in the United States (US)

When Products and Parts provided under this Agreement originate in the US, prior to its first shipment of Products and Parts to Cirrus, Seller shall provide Cirrus' International Trade Compliance Department with a valid Manufacturer's Affidavit, or a Certificate of Origin representing through the document that the Products and Parts in question have undergone a substantial transformation in the US as required by Customs and Border Protection (CBP). (19 CFR 10.1.2[e])

Frequency of submittal: Subsequent to the initial submittal, if any change

occurs in the country of origin of Products and Parts provided under this Agreement, Seller must submit an appropriate new Certificate of Origin. At Seller's option, if origin changes frequently, Seller may provide a new Certificate of Origin with each shipment of Products and Parts.

#### **21.1.2 Products and Parts Originating Outside the US**

In all cases, when Products and Parts provided under this Agreement originate outside of the US, prior to its first shipment of Products and Parts to Cirrus, Seller shall provide Cirrus a Certificate of Origin, specifying the country of origin, including supplier name, Cirrus part number, part description, and, as requested, any other documentation that is reasonably required for Customs compliance. The Certificate of Origin shall represent that the Products and Parts in question have undergone a substantial transformation in the indicated country as required by CBP (19 CFR 10.1.2[e]).

Frequency of submittal: Subsequent to the initial submittal, if any change occurs in the country of origin of Products and Parts provided under this Agreement, Seller must submit an appropriate new Certificate of Origin. At Seller's option, if origin changes frequently, Seller may provide a new Certificate of Origin with each shipment of Products and Parts.

#### **21.1.3 Products and Parts originating in North America**

When Products and Parts provided under this Agreement originate in North America, if such is available, Seller shall, prior to its first shipment of Products and Parts to Cirrus, provide Cirrus' International Trade Compliance Department with a valid, accurately completed North American Free Trade Agreement (NAFTA) Certificate of Origin (Form 434 or Certificate) for all Products and Parts that qualify for preferential duty treatment under NAFTA. NAFTA Certificate of Origin forms are available at <http://www.cbp.gov/nafta/resource.htm>. Unless Cirrus requests individual Certificates for each shipment, Seller may provide Certificates annually to cover multiple shipments. Certificates must be completed with entries in every block in accordance with instructions supplied with Form 434.

In accordance with NAFTA rules, Seller shall notify Cirrus in writing of any changes that might result in the Products and Parts being ineligible for preferential duty treatment under NAFTA. Seller recognizes that the Certificate will be used by Cirrus as proof of eligibility for duty preferential treatment, and Seller agrees to provide full cooperation to Cirrus for any US, Canadian, or Mexican Customs inquiries into NAFTA claims that arise



out of any Product or Parts furnished under this Agreement.

**21.1.4** Seller shall send or e-mail signed Manufacturer's Affidavits, signed Certificates of Origin and other statements specifying the county of origin to Cirrus' International Trade Compliance Department at the following address or e-mail address:

ATTN: Manager, International Trade Compliance  
Cirrus Design Corporation  
4515 Taylor Circle  
Duluth, MN 55811  
Phone: 800.279.4322  
email: mcoon@cirrusaircraft.com

**21.1.5** Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, supplier, or subcontractors at any tier, in performance of any of its obligations under this Section 20.1, including paragraphs 20.1.1 through 20.1.5.

**21.2** Classification of Products and Parts for International Traffic in Arms Regulations (ITAR) and U.S. Export Administration Regulations (EAR) Export Restrictions Notification.

**21.2.1** For each item of Technology (as defined in EAR: 15 CFR 768.799) Products and, Parts, and Technology provided under this Agreement, Seller shall provide, prior to first delivery of the Products, piece parts and component assemblies, Parts or Technology, the Export Control Classification Number (ECCN) under the EAR for that item of, even if Products and, Parts, and Technology are not U.S. origin.

**21.2.2** For each item of Products and Parts provided under this Agreement, Seller shall provide, prior to first delivery of the Products, piece parts and component assemblies, the Harmonized Tariff Schedule of the United States (HTSUS) classification and the Schedule B classification, if different, for that Products and Parts

**21.2.3** Prior to shipment of such Products and, Parts, and Technical Data, ( as defined in ITAR: 22 CFR 120-128 and 130) Seller shall notify Cirrus as to whether any Products, piece parts and component assemblies Product, Part or Technical Data provided under this contract are is controlled by the US International traffic in Arms Regulation (ITAR) as indicated by inclusion

on the US Munitions List (USML) or inclusion on a similar control list of a foreign government even if Products, Parts, Tooling, and Technical Data are not U.S. origin but their characteristics would fall within the USML descriptions.

**21.24** Prior to shipment of such Products and Parts, Parts, Tooling, or Technology, Seller shall notify Cirrus as to whether any Products, piece parts and component assemblies Parts or Tooling, or Technology provided under this contract are subject to export restrictions under the US Export Administration Regulations (EAR) or are otherwise covered by the “dual use” categories under the Wassenaar Agreement.

**21.25** Seller certifies, to the best of its knowledge and belief, that:

(A) No United States government (“Federal”) appropriated funds have been paid or will be paid, by or on behalf of Seller, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement,

Seller shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

(C) Seller shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under subgrants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(D) This language in this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty

of not less than \$10,000 and not more than \$100,000 for each such failure.

21.3 International Sourcing. Should Seller decide to relocate any of its manufacturing of Products and Parts internationally, Seller must notify Cirrus of the proposed relocation a minimum of 180 days prior to the planned relocation. Seller shall comply with all government regulations (See e.g. 20.4) and all applicable provisions of this Agreement.

All shipments of Products and Parts from international sources must be packaged utilizing tamper resistant security seals either on individual boxes or on containers. Place of packing of Products/containers must be indicated on the packing list accompanying each shipment.

#### 21.4 Government Regulations

**21.41** The Products and Parts and Data covered by this Agreement may be subject to governmental rules and regulations including but not limited to the provisions of US Customs and Border Protection laws (Title 19 of the US Code) and regulations (Title 19 of the Code of Federal Regulations), the Export Administration Act of 1979 (50 USC 2401 et seq.), the Export Administration Regulations (EAR) promulgated thereunder (15 CFR 768-799), the US Arms Export Control Act (22 USC 2778 et seq.), the International Traffic in Arms Regulations (ITAR) (22 CFR 120-128 and 130), and non-U.S. export laws and regulations.

**21.42** Seller acknowledges that (1) these US statutes and regulations impose restrictions on the import from and export to countries outside the US of certain categories of products, and data, (2) licenses from the US Department of State and/or the US Department of Commerce may be required before such products, g and data can be exported and in some cases, imported, (3) these licenses may impose additional restrictions on use and further disclosure of such products and data, and (4) the export or disclosure of such products and data to foreign persons is subject to these statutes, regulations, license requirements and restrictions regardless of whether the export occurs in the US or abroad.

**21.43** Upon request of Cirrus, Seller shall promptly and without additional cost to Cirrus furnish any documentation, including import certificates or end user statements, which is reasonably necessary to support the requesting party's application for US import or export approval.

**21.44** Seller represents, warrants and covenants that no Products, Parts or Data submitted under this Agreement and no items or data provided to Seller by Cirrus will be imported, exported, or re-exported by Seller contrary to these statutes and regulations and applicable non-US import and export laws and

regulations. Seller shall comply with all export regulations and shall not export any proprietary Data, information, tooling or other manufacturing aids, or technology owned by Cirrus, without the express written agreement of Cirrus.

Seller acknowledges that Cirrus may be required by U.S. export control regulations to prevent the disclosure of certain technical data to individuals who are not U.S. citizens or permanent resident aliens.

For purposes of compliance with U.S. export control regulations, Seller shall ensure that all workers performing work pursuant to this Contract are U.S. citizens or permanent resident aliens and shall indemnify the Cirrus against all fines, penalties, costs and expenses incurred by the Cirrus as the result of a failure by Seller to comply with such a requirement.

- 21.45** If Seller wishes to supply to Cirrus any Products, Parts or Data that are controlled under the provisions of the Export Administration Act, the EAR, the US Arms Export Control Act or the ITAR, Seller shall first obtain Cirrus' written consent. Upon consent by Cirrus, Seller will provide certification that the Products, Parts and Data are EAR or ITAR controlled. If the Products, Parts and Data supplied by Cirrus are not controlled under the provisions of the Export Administration Act, the EAR, the US Arms Export Control Act or the ITAR, Seller will provide Cirrus certification that the Products, Parts and Data are not EAR or ITAR controlled. Requests for consent and the certifications required by this paragraph shall be addressed to Cirrus' Manager, International Trade Compliance.
- 21.46** Seller shall package ITAR Products and Parts separate from non-ITAR Products and shall prominently mark the packaging: "Products subject to ITAR control." Data, technology and source code subject to ITAR control shall be prominently marked: "Subject to ITAR control."
- 21.47** Seller shall package Products and Parts subject to export restrictions under the EAR separately. The packaging of such Products and Parts shall be prominently marked: "Subject to Export restrictions." Data, technology and source code subject to export restrictions under the EAR shall be prominently marked: "Subject to Export restrictions." This obligation is not applicable to Products, Parts or Data that are EAR99.
- 21.48** Seller shall identify all Products, Parts, Data and technology subject to control under the EAR by providing a certification as to the appropriate ECCN and the reason(s) for control to Cirrus' Manager, International Trade Compliance.

**21.49** Seller shall indemnify and hold Cirrus harmless from all claims, demands, damages, costs, fines, penalties, attorneys' fees, and other expenses arising from Seller's failure to comply with the above referenced laws and regulations and the provision of this Section 20 requiring compliance with such laws and regulations.

**22.0 AMENDMENT BY LAW:** This Agreement shall be deemed to contain all provisions required to be included by any applicable local, state or federal laws, Orders, regulations or directives heretofore or hereafter promulgated without the subsequent amendment of this Agreement specifically incorporating such provisions.

**23.0 ASSIGNMENT/SALE OF BUSINESS:** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as expressly provided in this Agreement, Supplier may not assign any rights or delegate any duties under this Agreement (including by operation of law) without the prior written consent of Cirrus, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be null and void. Cirrus may freely assign its rights and delegate its obligations hereunder in whole or in part.

**24.0 NOTICES:** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally, or sent by United States certified or registered mail, or sent by private overnight delivery service addressed to Seller or Cirrus, as the case may be, at the addresses set forth on the face of this Agreement, with postage thereon fully prepaid. Notice shall be effective upon receipt.

**25.0 AUTHORIZATIONS:** All authorizations of Cirrus required or permitted to be given herein shall be deemed properly given only if given in writing by an authorized purchasing representative of Cirrus.

**26.0 DISPUTES:** Any dispute that cannot be resolved by mutual agreement shall be resolved in accordance with Article 19 hereunder. Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of Products in accordance with Cirrus' direction. Upon resolution of the dispute, Orders shall be equitably adjusted, if necessary, to reflect such resolution.

**27.0 WAIVER:** No waiver by Cirrus of any breach of any Orders or the granting of an extension for performance hereunder shall be deemed to be a waiver of any other or subsequent breach.

**28.0 DATA:**

**28.1** General: All drawings and specifications, whether furnished or paid for by Cirrus, shall be the property of Cirrus, subject to removal at any time upon demand by Cirrus without additional costs, shall be used only in filling Orders from Cirrus, shall be kept separate from other drawings and specifications, and shall be identified as the property of Cirrus. The information contained in reports, drawings, documents or other records which are furnished to Seller by Cirrus relative to Orders, to the extent that such information is not in the public domain, shall not be disclosed to others, except to Subtier Suppliers as necessary for completion of the Orders, in which event the Subtier Suppliers shall have the same obligation of nondisclosure. Upon completion, termination, or cancellation of this Agreement, Seller shall return all drawings and specifications to Cirrus, in the event Cirrus requests return of any such items, within thirty (30) days after the effective date of completion, termination or cancellation. Any such Data of Cirrus retained by Seller shall remain subject to the restrictions on use, reproduction and disclosure contained within this Agreement, which shall survive the cancellation, termination, or completion of any Orders. Seller may not disclose the existence of any Order(s) or the items to be supplied hereunder without Cirrus' prior written consent, except to Subtier Suppliers who shall have the same responsibility.

**28.2** Data Warranty and Guarantee: Seller understands and agrees that all Data supplied by Cirrus to Seller used to design the Products, functions within the Products, or that is utilized within software associated with the Products is exclusively Cirrus' property and is considered proprietary, privileged, and confidential; so long as the Data was not available to Seller through the public domain. The Data, in its raw form or any computed form, whether co-mingled with other Data or standing independently, is the sole property of Cirrus. Seller shall not copy, reverse engineer, modify, create derivatives or attempt to discover the source code, or underlying ideas and/or algorithms. The use of the Data by Seller will be consistent with this Agreements and the Product Support Agreement, (if applicable), and shall be restricted to the following applications:

1. Input Data for Products.
2. Output Data for Products.
3. Data for computational purposes for Products.
4. Data for operational characteristics for Products.
5. Data for use as embodied, calculated, or manipulated within the Products.

Seller warrants and covenants that the Data provided by Cirrus for use in the Products, including any computations, algorithms, or results derived from said Data, or used within the Products, embodied in the Products, or to support the Products, purchased from, or provided by Seller to Cirrus, will only be used to the benefit of Cirrus and Cirrus' customers.



Any associated Data out-put, tabulation, calculation, or any other resultant information, will not be kept, modified, tabulated, stored, computed, altered, maintained, or used in any fashion by Seller except for the specific use to design the Products, functions within the Products or is utilized within software associated with the Products, without the express written authorization of Cirrus.

Distribution of Products, containing Cirrus Data, as defined and detailed herein, shall not be distributed outside the specific distribution channels outlined within this Agreement and/or the Product Support Agreement. Seller warrants and covenants that any transmittal of the Data, whether in its raw form or any other form, including embodiment in software or hardware, is adequately protected.

**28.3** Data Format and Language: All Data, correspondence, or any other written communication shall be provided to Cirrus in English; and all weights and measurements shall be provided using United States standard weights and measurements.

**28.4** Intellectual Property: Except as otherwise set forth in this Agreement, nothing contained in this Agreement shall be construed as a grant by one Party to the other of any ownership in, or right or license to use, such Party's copyrights, trade secrets, trademarks, service marks, trade names, logos, or other intellectual property without the prior written approval of such Party for each such use; provided, however, that upon transfer of title to the Products hereunder, Seller hereby grants to Cirrus a non-exclusive, royalty-free and transferable license to use the Products and any manuals, use instructions and other documentation relating to the Products, any software embedded in the Products, all technical specifications and any patents, trade secrets, proprietary information and know-how incorporated in the Products or otherwise provided or disclosed by Seller for Cirrus' use under this Agreement. Seller represents and warrants it has all rights necessary to grant to Cirrus the license hereunder and use of the Product, and such use will not misappropriate or infringe any copyright, patent, trademark, trade secret or other proprietary, property third party rights or violate any contractual rights. Products or materials made by Seller or its Subtier Suppliers in accordance with Cirrus's Specifications and/or Data shall not be furnished or quoted to any other person or concern without Cirrus's prior written consent. Any invention or similar intellectual property first made or conceived by Seller in the performance of this Agreement or which is derived from or based on the use of Confidential Information or Data supplied by Cirrus shall be considered as being a "work made for hire" and shall be and becomes the property of Cirrus. Seller shall execute such documents necessary to perfect Cirrus's title thereto.

**29.0** **CONFIDENTIALITY.** Each party agrees to keep the terms of this Agreement strictly confidential and to only disclose such terms to agents and employees of the party on a

“need to know” basis. Further, each Party shall assure that no agent or employee to whom any provision of this Agreement is disclosed shall further disclose such provisions in any manner inconsistent with this Section. Notwithstanding the foregoing, the Parties acknowledge that invoices and shipping documents may have to be disclosed to third parties in the ordinary course of business and agree that such disclosures are not prohibited by this Paragraph.

**29.1** “Confidential Information” means all information and materials disclosed by or on behalf of a Party (the “Disclosing Party”), or otherwise received, observed or accessed by the other party (the “Receiving Party”), in connection with this Agreement and the negotiation thereof, whether in oral, written, visual or electronic form, whether prior to or after the Effective Date hereof, and regardless of whether marked or identified as “Confidential” at the time of disclosure, including: (i) all business, accounting, marketing, customer, sales, business and pricing information concerning the Disclosing Party, its products, services, affiliates and suppliers; (ii) all trade secrets, know-how, inventions, and other creative, technical, product and service information concerning the Disclosing Party, its products, services, affiliates and suppliers, including recipes, formulas, product standards,

manufacturing processes and techniques, ingredient sources, equipment and temperature settings, mixing times, baking times and other processes; (iii) all observations made through inspection, evaluation, testing, or use of products, services, facilities, equipment or other property, methods or processes of the Disclosing Party; (iv) all documentation and information posted on secure websites and made available to Receiving Party on a password protected or other access controlled basis; and (v) all other information that a reasonable person familiar with the industry of the Disclosing Party, its affiliates or suppliers would consider confidential or proprietary. A Disclosing Party shall have no obligation to disclose any particular Confidential Information. Notwithstanding the foregoing, Confidential Information does not include any information or materials that: (i) was in the Receiving Party’s possession prior to the date of disclosure by the Disclosing Party, as demonstrated by written records; (ii) is rightfully acquired by the Receiving Party from a third party that is legally entitled to make such disclosure, without restriction as to its use or disclosure; (iii) is independently developed by or on behalf of the Receiving Party without reference to or reliance on the Confidential Information of the Disclosing Party, as established by documented and competent evidence; or (iv) was or is placed in the public domain through no act or failure to act on the part of the Receiving Party, its representatives or affiliates.

**29.2** From time to time, the Receiving Party may receive, observe, and/or have physical or electronic access to certain Confidential Information of the Disclosing Party. The Receiving Party shall protect such Confidential Information against unauthorized access, use or disclosure with at least the same degree of care used to protect its own Confidential Information of a similar nature, but with no less than reasonable care. The Receiving Party shall access and use the Confidential Information of the



Disclosing Party solely for the purpose of performing this Agreement (“Permitted Purpose”). Except as expressly permitted herein, the Receiving Party shall not, nor shall it permit any third party to, access, use, or disclose the Confidential Information of the Disclosing Party for any other purpose, whether for the Receiving Party’s own benefit or the benefit of any third party, without the prior written authorization of Disclosing Party in each instance. The Receiving Party may disclose Confidential Information only to those officers, employees, affiliates and agents of the Receiving Party (each a “Representative”) who have a need to know the Confidential Information for the Permitted Purpose, and who are legally bound by confidentiality obligations at least as protective of the Disclosing Party’s Confidential Information as the provisions of this Agreement. Any unauthorized access to, use or disclosure of Confidential Information by a Representative or affiliate of the Receiving Party shall be deemed a direct breach of this Agreement by the Disclosing Party. Receiving Party may be required to execute additional confidentiality agreements as a condition to any inspection of Disclosing Party’s or its subcontractors’ facilities. Supplier represents and warrants that it has and shall implement and continue to maintain appropriate technical, administrative, and physical security measures that are designed to: (i) ensure and protect the security, integrity, and confidentiality of the Cirrus’ Confidential Information and communications with Cirrus (ii) protect against any unauthorized use, disclosure, acquisition of access to Cirrus Confidential Information or communication with Cirrus. Supplier shall notify Cirrus without undue delay, but in no less than 72 hours, of any potential or actual data breach involving Cirrus Confidential Information or communications with Cirrus. Supplier agrees to provide reasonable assistance as may be necessary to facilitate the handling of any data breach in an expeditious and compliant manner, and to comply with its obligations under applicable data protection laws.

- 293** Upon the expiration or termination for any reason of this Agreement, and/or upon the Disclosing Party’s earlier written demand, the Receiving Party shall, at the written election of the Disclosing Party, promptly return or destroy any Confidential Information of the Disclosing Party in its possession or control (including copies and summaries thereof), and upon request, confirm that it has purged its records and files of, and no longer has access to, any such Confidential Information. The Receiving Party’s obligations under this Agreement with respect to Confidential Information disclosed during the term hereof, and all rights and remedies of the Disclosing Party related thereto, shall survive the expiration or termination of this Agreement for any reason, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.
- 294** Each Party recognizes that any actual or threatened breach of the provisions of this Paragraph would cause irreparable harm to the other Party, the extent of which would be difficult and impracticable to assess, and that money damages alone would not be an adequate remedy for such breach. Accordingly, in addition to all other remedies available under the circumstances, each Party shall be entitled to



seek immediate equitable and other provisional relief in any court of competent jurisdiction.

**30.0 INDEPENDENT CONTRACTORS:** Cirrus and Seller are independent contractors only, and nothing herein and nothing in the performance by either Party shall be interpreted or construed to create a master/servant, employer/employee, joint enterprise, joint venture, partnership, trust/beneficiary, fiduciary/ward or other legal or contractual relationship imposing vicarious liability on one Party for the acts or omissions of the other Party. Neither Party shall have the authority or power to act on behalf of the other Party, except as expressly provided herein.

**31.0 INTELLECTUAL PROPERTY:** Except as otherwise set forth in this Agreement, nothing contained in this Agreement shall be construed as a grant by Cirrus to Seller of any ownership in, or right or license to use, such Cirrus' copyrights, trade secrets, trademarks, service marks, trade names, logos, or other intellectual property without the prior written approval of Cirrus for each such use. Upon transfer of title to the Products hereunder, Seller hereby grants to Cirrus a non-exclusive, royalty-free and transferable license to use the Products and any manuals, use instructions and other documentation relating to the Products, any software embedded in the Products, all technical specifications and any patents, trade secrets, proprietary information and know-how incorporated in the Products or otherwise provided or disclosed by Seller for Cirrus's use under this Agreement. Products or materials made by Seller or its subtier suppliers in accordance with Specifications and/or Cirrus Confidential Information or intellectual property shall not be furnished or quoted to any other person or concern without Cirrus' prior written consent. Any invention or similar intellectual property first made or conceived by Seller in the performance of this Agreement or which is derived from or based on the use of Confidential Information or Data supplied by Cirrus shall be considered as being a "work made for hire" and shall be and becomes the property of Cirrus. Seller shall execute such documents necessary to perfect Cirrus's title thereto. For clarification, Seller is not granted any right to use any trademark(s) or trade name(s) of Cirrus. Seller shall not register, attempt to register or attempt to obtain any interest in any such trademark(s) or trade name(s) in any jurisdiction. At the request of Cirrus, Seller shall perform whatever acts Cirrus reasonably deems necessary or desirable to preserve and protect, and to vest in Cirrus, ownership of and title to the same, whether in the United States or any other jurisdiction.