



## **JANA, Inc. Purchase Order Terms and Conditions**

Purchase orders placed with JANA, Inc. or its affiliates and subsidiaries, including Aircraft Systems & Manufacturing, Inc. (d/b/a JANA Engineering) (collectively, "JANA" or "we") are subject exclusively to these terms and conditions of sale (these "Terms") which shall apply to and form a part of every purchase order issued by Customer ("Purchase Order(s)") and shall supersede and replace any other terms and conditions appearing on a Purchase Order. Nothing contained in or attached to any Purchase Order will operate to modify or add to the provisions of these Terms unless it is the mutual intent of the parties as stated in writing to modify or add to these Terms in respect to a specific Purchase Order. In the event of a conflict between the provisions of these Terms and the terms and conditions of any Purchase Order form, the provisions of these Terms shall prevail.

### **1. Products & Services**

JANA shall sell and deliver to the purchasing party ("Customer") and Customer shall purchase and accept delivery and pay for, subject to the terms and conditions hereinafter specified, services and/or products manufactured and/or supplied by JANA ("Products") as may be ordered by Customer.

### **2. Purchase Orders**

Purchase Orders shall include (i) the Purchase Order number; (ii) JANA's quotation/proposal reference number, if applicable; (iii) JANA's part number(s); (iv) general description of the Products to be provided including, if applicable, specifications referenced in JANA's quotation; (v), prices; (vi) quantities; (vii) requested date or dates of delivery; (viii) location to which Products are to be shipped; (ix) Customer's carrier and mode of transportation plus any special routing, packing, labeling, handling or insurance requested by Customer, if applicable; and (x) instructions regarding invoicing. JANA shall, within ten (10) business days of receipt of a Purchase Order, either accept a Purchase Order issued in accordance with the provisions hereof with a firm Purchase Order acknowledgment or JANA shall notify Customer of the reason JANA declines to accept the Purchase Order if it is inconsistent with these Terms and/or JANA's quotation. JANA's acknowledgement shall provide a firm delivery commitment for Products ordered.

### **3. Change Orders**

Modifications to any Purchase Order which affect JANA's performance, including but not limited to changes in the specification, delivery time, or interchangeability of any Product can only be accomplished in writing signed by the authorized representatives of Customer and JANA (a "Change Order"). Change Orders shall include the reason for the change; a description of the change; the effect on the specification, price, delivery time and/or interchangeability of the Product; and the effective date of the change.

### **4. Pricing**

Unless stated otherwise in JANA's proposal/quote, Product prices are valid for 90 days from quotation. The prices set forth in JANA's proposal or quote, as applicable, shall be firm, fixed prices, Ex-Works (EXW) JANA's facility, and shall be subject to adjustment (1) based on delivery dates in accordance with the price escalation formula described in JANA's proposal, if applicable, (2) due to any Change Order, or (3) if JANA is required to comply with any new industry-wide regulatory standards. All pricing of Products listed in JANA's proposal/quote shall be based upon the prices set forth in JANA's proposal/quote in effect on the date of shipment by JANA of Customer's Purchase Order. Unless otherwise noted in JANA's proposal or quote, all prices are in U.S. dollars. All prices are subject to change without notice.



## 5. Delivery

Unless otherwise stated in JANA's proposal, delivery of Products shall be EXW JANA's facility in accordance with Incoterms 2010. JANA shall ship Products by the mode and carrier designated by Customer in accordance with the shipping instructions provided in the applicable Purchase Order. Where Customer provides no instructions for the method of shipment, the method of shipment shall be at JANA's discretion. JANA reserves all rights with respect to delivered Products permitted by law including, but not limited to, the rights of rescission, repossession, resale and stoppage in transit until the full amount due from Customer for all delivered Products has been paid in full. Title and risk of loss shall pass to Customer upon delivery to the EXW point or upon delivery into storage (in the event of a "ship in place" shipment). All shipping expenses from the EXW point to Customer, including transportation and insurance costs, shall be the responsibility of the Customer. If such shipping expenses are prepaid by JANA on behalf of Customer, such expenses shall be payable to JANA upon demand. JANA reserves the right to make partial shipments against total Purchase Order requirements and deliver in advance of the scheduled delivery date whenever possible.

## 6. Taxes, Duties and Other Charges

All prices are exclusive of any sales, use, excise, value-added or other taxes, duties or similar charges which may be imposed by any relevant taxing authority arising from the sale, use or transfer of any Product delivered or performed under a Purchase Order. Any such taxes, duties or similar charges shall be the responsibility of the Customer. In addition to the purchase price of the Products, Customer shall reimburse JANA upon demand for the amount of any such taxes, duties or similar charges required to be paid or collected by JANA. If JANA has reason to believe that any such tax, duty or similar charge will be applicable, JANA shall separately state the amount of any such tax, duty or similar charge in its invoice. Notwithstanding the above, Customer shall in no event be responsible for any income taxes payable by JANA to any relevant taxing authority.

If new tariffs, duties, or similar government-imposed charges are introduced after contract execution, the parties will renegotiate pricing in good faith to reflect the impact of such charges.

## 7. Payment Terms

Unless otherwise stated in JANA's proposal, payment terms are Prepayment. Credit terms may be issued by JANA to Customer, subject to Customer's successful credit application. JANA may re-evaluate Customer's credit standing at anytime. If JANA determines in its sole discretion that Customer fails to qualify for such payment terms at any time, then JANA may, without notice to Customer, modify or withdraw credit terms. Any advance payments shall be as specified in JANA's proposal. Where and to the extent specified in JANA's proposal, an irrevocable letter of credit, confirmed by a bank designated by JANA, may be required. Such letter of credit shall be subject to review and concurrence by JANA as to its content prior to issuance. All fees and expenses in connection with such letter of credit, and its confirmation, shall be borne by Customer. Customer's payment(s) must be accompanied by remittance details containing at a minimum JANA's invoice number and amount paid per invoice. Payments must be in accordance with the "Remit To" field on each invoice.

## 8. Overdue Payments

In the event that Customer fails to make any payments when due, the Customer shall pay to JANA finance charges on delinquent amounts, based on five percent (5%), or if lower the maximum amount permitted by law, during the applicable period that payments are late and calculated from the first date on which such payment is overdue through the date of actual payment. All finance charges are immediately due and payable as they accrue. In addition, immediately after written notice to Customer for payment thereof and for so long as such indebtedness shall remain unpaid, JANA shall have the right, in addition to such other remedies as it may have available at law or in equity, to (i) withhold future deliveries to Customer against all existing or future Purchase Orders which Customer may have



with JANA; (ii) make future deliveries on a Cash In Advance (C.I.A.) or confirmed, irrevocable Letter of Credit (C.L.O.C.) basis against all existing or future Purchase Orders which Customer may have with JANA; (iii) refuse to process any credit to which Customer may be entitled; (iv) set off any credit or sum owed by JANA to Customer against any undisputed amount owed by Customer to JANA; (v) declare Customer's performance in breach and immediately terminate the Purchase Order; (vi) charge storage or inventory carrying fees on Products; (vii) recover all costs of collection including, without limitation, reasonable attorneys' fees; (ix) if Customer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (x) combine any of the above rights and remedies as may be permitted by applicable law. Until the purchase price and all other sums due pursuant hereto are paid in full, JANA retains a security interest in the Products sold to Customer and Customer shall execute financing statement(s) on request and Customer irrevocably authorizes JANA to execute and file the same.

#### 9. Disputed Invoices

If Customer disputes any invoice, or portion thereof, rendered by JANA, Customer will notify JANA within ten (10) working days of the date of JANA's invoice. Failure to provide notification within said period shall be deemed acceptance of JANA's invoice by Customer. The parties will use all reasonable efforts to resolve such disputes expeditiously. Notwithstanding any invoice disputes, Customer shall promptly remit payment on those invoices, or portions thereof, that are not in dispute.

#### 10. Specifications

All Products shall conform to the specification agreed to by Customer and JANA in the applicable Purchase Order, which shall be based on FAA regulatory specifications in effect as of the date of the Purchase Order unless otherwise stated in the Proposal.

#### 11. Design Changes

JANA shall review all specification changes requested by Customer on a Product and shall promptly advise Customer as to whether such a change is technically feasible and, if so, the effect on price, delivery schedule, interchangeability or technical performance.

#### 12. Product Improvements

Prior to delivery of any Product covered by a Purchase Order, JANA reserves the right, without Customer's consent or the necessity of a Change Order, and at no charge to Customer, to incorporate any design modifications, engineering changes or improvements in the specification of a Product provided that unit price, delivery schedule, interchangeability or technical performance are not affected.

#### 13. Regulatory Authority Requirements

Prior to delivery of any Products covered by a Purchase Order, JANA shall incorporate those design modifications or engineering changes required to comply with any new mandatory industry-wide regulatory standards imposed subsequent to the date of the Purchase Order. JANA shall notify Customer immediately upon determination that such modifications or changes are to be incorporated. If any such modification or change results in an increase in the cost of, or time required for, performance of a Purchase Order, an equitable adjustment shall be negotiated in the price or delivery schedule. Any delay in delivery due to incorporation of such a modification or change shall be considered as an Excusable Delay.

#### 14. Certification/Documentation

When required/specified in JANA's proposal, Products shall be certified to Federal Aviation Administration of the United States (FAA) standards, or if applicable to European Aviation Safety Agency (EASA)



requirements other than those that contravene FAA requirements, in effect on the date of shipment. Unless otherwise stated in JANA's proposal, all Products shall be accompanied by JANA Certificate of Compliance. Where specified, the Certificate of Compliance will be accompanied by FAA Form 8130-3 or equivalent.

#### 15. Inspection and Acceptance

Final inspection and acceptance by Customer shall be made within thirty (30) days of the date of delivery of a Product. Failure to provide written notification of rejection explaining the basis for rejection within said period shall be deemed acceptance of a Product by Customer. Once accepted, Customer's only recourse or remedy for non-conforming or defective Products shall be as provided in the warranty section of these Terms. JANA will have a reasonable opportunity to repair or replace rejected Products, at its option, or credit Customer with the purchase price if repair or replacement is not deemed feasible. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Products in transit, except that JANA will reimburse Customer for normal and reasonable surface shipping costs incurred to return properly rejected Products to JANA's designated facility. If JANA reasonably determines that rejection was improper, Customer will pay all expenses relating to the improper rejection. Customer will comply with JANA's Return Material Authorization policy and will ship Products to JANA suitably packed for shipment to prevent damage in transit in accordance with JANA's standard shipping practices.

#### 16. Packaging

All Products shall be prepared and packaged in accordance with generally accepted industry practices suitable for the means of transportation chosen by Customer for the shipment. Special packaging requirements may incur additional costs for which the Customer will assume responsibility.

#### 17. Warranty

Unless otherwise stated in JANA's proposal, JANA warrants that at the time of shipment to Customer all Products shall conform to the applicable specifications, and for a period of one (1) year from date of shipment will be free from defects in material and workmanship. The foregoing warranty only applies to Products under normal use and serviced in accordance with JANA's installation, operating, maintenance and other written instructions. Customer must notify JANA in writing during the warranty period of a nonconformance and, within thirty (30) calendar days of discovery of the nonconformance, Customer must disposition the Product in accordance with JANA's written instructions. JANA's obligation and Customer's sole remedy under this warranty shall be limited to the repair or replacement of the nonconforming warranted Product, or any part thereof, solely at the option of JANA. All Products repaired or replaced are warranted only for the unexpired portion of the original warranty period. Customer will comply with JANA's return material authorization policies and will ship Products to JANA suitably packed for shipment to prevent damage in transit in accordance with JANA's standard shipping practices. The warranties provided by JANA, and the remedies of Customer, provided under this article, are exclusive and in substitution for, and Customer hereby waives, releases and renounces all other warranties, conditions, and representations, whether expressed, implied, statutory, written, oral or otherwise, including, but not limited to, any warranty of merchant ability or fitness for a particular purpose, and any implied warranty arising from any course of performance or dealing or trade usage. No agreement varying this warranty or the obligations of JANA hereunder will be binding upon JANA unless in writing and signed by a duly authorized representative of JANA.

#### 18. Liability

The price allocable in this Purchase Order to any Product alleged to be the cause of any loss or damage to Customer shall be the ceiling limit of JANA's liability. To the extent permitted by applicable law, these limitations and exclusions will apply regardless of whether liability is founded in negligence, breach of contract, warranty or strict liability whether arising out of or in connection with (1) this Purchase Order



or (2) the design, manufacture, delivery, sale, repair, replacement or use of any such Product, or otherwise. In no event shall JANA have any liability for any special, indirect, incidental or consequential damages including, but not limited to, loss of profits or revenues or use even if informed of the possibility of such damages. These exclusions of damages shall be deemed independent of, and shall survive, any failure of the essential purpose of any limited remedy under these terms.

#### 19. Proprietary Rights

Sale of the Products does not convey to Customer any right or license under any present or future trademark, copyright, trade secret or other intellectual property right owned, controlled or licensed by JANA ("Intellectual Property") nor any right to use JANA's Proprietary Information (defined below) which is incorporated or embodied in Products other than as set forth in these Terms. If Customer engages a third party to manufacture and/or sell any Products which incorporate or embody JANA's Intellectual Property and/or Proprietary Information or seeks for itself regulatory approval or certification of any Products from any United States or other government agency or authority, such act will constitute (i) an infringement of JANA's Intellectual Property, or (ii) an unauthorized use of JANA's Proprietary Information and injunctive relief shall be the specific remedy therefore, in addition to all other remedies available by law or equity.

#### 20. Excusable Delay

JANA will not be liable to Customer for any failure to meet its obligations due to any cause beyond JANA's reasonable control and not occasioned by its fault or negligence (an "Excusable Delay"). Excusable Delay events may include but are not limited to (i) delays or refusals to grant an export license or the suspension or revocation thereof; (ii) any other acts of any government that would limit the ability for contract performance; (iii) fires, earthquakes, floods, severe weather conditions or any other acts of God; (iv) quarantines or regional medical crises; (v) labor strikes or lockouts; (vi) riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property); and (vii) shortages or inability to obtain materials or components. If an Excusable Delay event causes a JANA delay, then the date of JANA's performance will be extended by the period of such delay or JANA may cancel that affected Purchase Order with respect to such delayed Products.

#### 21. Termination for Default

Except for Customer's failure to pay invoices when due (which shall be governed by Section 8 hereof), if at any time either party shall be in default hereunder and shall fail to remedy such default to the reasonable satisfaction of the other party within thirty (30) days following notice from such other party specifying such default, such other party may terminate this Purchase Order by written notice of termination to the defaulting party within ten (10) days following the said thirty (30) days. Either Customer or JANA may terminate this Purchase Order immediately upon written notice if the other party (1) becomes insolvent; (2) files a voluntary petition in bankruptcy; (3) executes an assignment for the benefit of creditors; (4) is adjudicated a bankrupt or insolvent or a receiver or trustee is appointed for that party; or (5) the other party terminates its existence or ceases to do business. Unless otherwise mutually agreed in writing, any termination of this Purchase Order shall operate as a cancellation of the entire undelivered or unperformed portions of the Purchase Order placed hereunder by Customer and accepted by JANA prior to the effective date of such termination.

#### 22. Termination for Convenience

Customer may terminate, for its convenience, this Purchase Order, in whole or in part, by providing written notice to JANA at least ninety (90) days prior to the scheduled delivery date of a Product. During the period of notice, JANA shall (1) discontinue all work with respect to that portion of the Purchase Order terminated by Customer, (2) place no additional orders or subcontracts for materials or services as to that part of the work terminated, and (3) take such other reasonable action as may reduce the



termination costs due JANA under this Section. In the event Customer terminates any Purchase Order, in whole or in part, Customer shall pay to JANA (1) an amount equal to the aggregate purchase price of all Products completed or services performed prior to the effective date of termination whether completed before the giving of such termination notice or completed thereafter prior to the effective date of termination set forth in such termination notice; and (2) all of JANA's termination costs incurred in the production of all uncompleted Products (including, but not limited to, raw materials, fabricated or unfabricated parts, work in process, supplies and other material, labor, unrecovered non-recurring costs, payments to suppliers, general and administrative overhead costs) plus a charge of thirty percent (30%), of the entire undelivered or unperformed portions of the Purchase Order placed hereunder by Customer and accepted by JANA prior to the effective date of such termination, for loss of production capacity and profits. In no event shall termination costs exceed the total purchase price of the Products terminated by Customer.

#### 23. Confidential Information

Customer will not disclose to any third party the terms of any Purchase Order or the provisions contained in these Terms. All JANA technical information or data of any kind including, but not limited to, all designs, specifications, drawings, concepts, software, know-how, research or the incorporation or embodiment thereof in one or more Products, or any other information expressly marked as "CONFIDENTIAL" or "PROPRIETARY" shall remain the property of JANA (JANA's "Proprietary Information"). Proprietary Information shall not be reproduced in any manner nor disclosed to others or used for any unauthorized purpose without the prior consent of JANA. Customer may use JANA's Proprietary Information only in relation to the application, operation and maintenance of JANA's Products by Customer for purposes directly relating to these Terms.

#### 24. Tooling and Data

JANA owns all rights to all specifications, drawings, engineering instructions, data, material, equipment, software, processes, facilities and tooling now existing or hereafter created, except to the extent that title is specifically transferred in writing from JANA to Customer or originally supplied from Customer to JANA.

#### 25. Applicable Law

These terms and the transactions arising out of any Purchase Order shall be governed by and construed in accordance with the laws of the State of Texas, United States, without reference to any conflict of law rules, the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, shall not apply.

#### 26. Venue & Jurisdiction

Venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce any provisions of these Terms or any Purchase Order shall lie within the courts of the State of Texas in Bexar County, or in the United States District Court for the Western District of Texas. In no event shall Customer commence any action arising out of the Purchase Order or the contract between the parties later than one year after the cause of action has occurred.

#### 27. Compliance with Laws

Customer and JANA shall comply with all statutes, laws, ordinances, regulations, rules and orders enacted or adopted by any federal, state, local, municipal or other authority or governmental body which may pertain to the conduct of the parties' business and their obligations hereunder. Customer and JANA shall obtain and pay for all permits, fees and licenses required to perform their respective obligations hereunder.





## 28. Export Regulations

This Purchase Order is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations. Except with the prior written approval of the United States Government, the Products provided by JANA to Customer hereunder shall not be, directly or indirectly, sold, leased, assigned, transferred, conveyed or in any other manner be disposed of in any country on a United States embargoed or restricted list. Customer represents and warrants to JANA that it shall not export any Products covered by this Purchase Order in violation of United States export laws and regulations. JANA shall apply for and obtain any United States export licenses/approvals required to enable JANA to export the Products from the United States. Customer shall assist JANA with any documentation needed in order to obtain such approvals.

## 29. Indemnity

Customer shall defend, indemnify and hold harmless JANA, its affiliates and their directors, officers, employees and agents, from and against all claims, losses, damages, actions, suits or judgments, including, without limitation, costs and expenses incident thereto (including, without limitation, court costs and reasonable legal fees), arising in whole or in part out of the negligence or willful misconduct of Customer, its affiliates and its and their directors, officers, employees and agents, or in connection with the installation, operation, use, maintenance, repair or modification of any of the Products.

## 30. Assignment

The rights and privileges of these Terms or any Purchase Order cannot be assigned or transferred, in whole or in part, by operation of law or otherwise, by Customer without the prior written approval of JANA, which consent shall not be unreasonably withheld. Any attempt to assign or delegate in violation of this section will be void.

## 31. Entire Agreement

These Terms set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior discussions between them. No waiver or modification of these Terms shall be binding upon the parties unless made in writing and signed by duly authorized representatives of both parties.

## 32. Waiver

The failure of JANA to enforce at any time any of the provisions of these Terms shall not be construed to be a continuing waiver of any provisions hereunder nor shall any such failure prejudice the right of JANA to take any action in the future to enforce any provisions hereunder.

## 33. Severability

If any of the provisions of these Terms are at any time held to be invalid or unenforceable, such provisions shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of the provisions which shall remain in full force and effect and, in lieu of the invalid or unenforceable provision, there will be added as part of these Terms one or more provisions as similar in terms as may be valid and enforceable under applicable law.

## 34. Notice

Notices or non-routine communications between the parties, other than Purchase Orders, will be in writing, sent by prepaid overnight courier service or US Mail with return receipt required, and shall be effective upon receipt by the party to which notice is given. Notices shall be addressed to the following respective addresses of the parties, or such other addresses as the parties may designate by notice



from time to time: if to JANA, the address indicated on JANA's quotation or the applicable JANA facility to which the Purchase Order was sent, and if to Customer, to Customer's address on its Purchase Order.

35. Setoff

Customer will not set off any amount, whether or not liquidated, against sums Customer asserts are due to JANA, JANA's parent, subsidiaries, affiliates or other divisions or units under any transaction with JANA, JANA's parent, subsidiaries, affiliates or other divisions or units, whether under these Terms or otherwise.

36. Survival

All provisions of these Terms which, by their nature should apply beyond completion of a Purchase Order, will remain in force after the expiration or any termination of these Terms.

37. Third Party Beneficiaries

Except as expressly provided to the contrary in these Terms, the provisions of these Terms are for the benefit of the parties hereto and not for the benefit of any third party.

38. Independent Contractors

The parties acknowledge that they are independent contractors and no other relationship, including without limitation partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by these Terms. Neither party has the right to bind or obligate the other.