



## **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, "Seller") 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 Buyer ("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 so 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**

Seller shall sell and deliver to the purchasing party ("Buyer") and Buyer 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 Seller ("Products") as may be ordered by Buyer.

### **2. Purchase Orders**

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

### **3. Change Orders**

Modifications to any Purchase Order which affect Seller'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 Buyer and Seller (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 Seller's proposal/quote, Product prices are valid for 90 days from quotation. The prices set forth in Seller's proposal or quote, as applicable, shall be firm, fixed prices, Ex-Works (EXW) Seller's facility, and shall be subject to adjustment (1) based on delivery dates in accordance with the price escalation formula described in Seller's proposal, if applicable, (2) due to any Change Order, or (3) if Seller is required to comply with any new industry-wide regulatory standards. All pricing of Products listed in Seller's proposal/quote shall be based upon the prices set forth in Seller's proposal/quote in effect on the date of shipment by Seller of Buyer's Purchase Order. Unless otherwise noted in Seller'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 Seller's proposal, delivery of Products shall be EXW Seller's facility in accordance with Incoterms 2010. Seller shall ship Products by the mode and carrier designated by Buyer in accordance with the shipping instructions provided in the applicable Purchase Order. Where Buyer provides no instructions for the method of shipment, the method of shipment shall be at the Seller's discretion. Seller 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 Buyer for all delivered Products has been paid in full. Title and risk of loss shall pass to Buyer 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 Buyer, including transportation and insurance costs, shall be the responsibility of the Buyer. If such shipping expenses are prepaid by Seller on behalf of Buyer, such expenses shall be payable to Seller upon demand. Seller 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 Buyer. In addition to the purchase price of the Products, Buyer shall reimburse Seller upon demand for the amount of any such taxes, duties or similar charges required to be paid or collected by Seller. If Seller has reason to believe that any such tax, duty or similar charge will be applicable, Seller shall separately state the amount of any such tax, duty or similar charge in its invoice. Notwithstanding the above, Buyer shall in no event be responsible for any income taxes payable by Seller 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 Seller's proposal, payment terms are Prepayment. Credit terms may be issued by Seller to Buyer, subject to Buyer's successful credit application. Seller may re-evaluate Buyer's credit standing at anytime. If Seller determines in its sole discretion that Buyer fails to qualify for such payment terms at any time, then Seller may, without notice to Buyer, modify or withdraw credit terms. Any advance payments shall be as specified in Seller's proposal. Where and to the extent specified in Seller's proposal, an irrevocable letter of credit, confirmed by a bank designated by Seller, may be required. Such letter of credit shall be subject to review and concurrence by Seller 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 Buyer. Buyer's payment(s) must be accompanied by remittance details containing at a minimum Seller'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 Buyer fails to make any payments when due, the Buyer shall pay to Seller 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 Buyer for payment thereof and for so long as such indebtedness shall remain unpaid, Seller 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 Buyer against all existing or future Purchase Orders which Buyer may have with Seller; (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 Buyer may have with Seller; (iii) refuse to process any credit to which Buyer may be entitled; (iv) set off any credit or sum owed by Seller to Buyer against any undisputed amount owed by Buyer to Seller; (v) declare Buyer'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 Buyer 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, Seller retains a security interest in the Products sold to Buyer and Buyer shall execute financing statement(s) on request and Buyer irrevocably authorizes Seller to execute and file the same.

#### 9. Disputed Invoices

If Buyer disputes any invoice, or portion thereof, rendered by Seller, Buyer will notify Seller within ten (10) working days of the date of Seller's invoice. Failure to provide notification within said period shall be deemed acceptance of Seller's invoice by Buyer. The parties will use all reasonable efforts to resolve such disputes expeditiously. Notwithstanding any invoice disputes, Buyer 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 Buyer and Seller 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

Seller shall review all specification changes requested by Buyer on a Product and shall promptly advise Buyer 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, Seller reserves the right, without Buyer's consent or the necessity of a Change Order, and at no charge to Buyer, 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, Seller 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. Seller shall notify Buyer 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 Seller'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 Seller's proposal, all Products shall be accompanied by Seller 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 Buyer 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 Buyer. Once accepted, Buyer's only recourse or remedy for non-conforming or defective Products shall be as provided in the warranty section of these Terms. Seller will have a reasonable opportunity to repair or replace rejected Products, at its option, or credit Buyer 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 Seller will reimburse Buyer for normal and reasonable surface shipping costs incurred to return properly rejected Products to Seller's designated facility. If Seller reasonably determines that rejection was improper, Buyer will pay all expenses relating to the improper rejection. Buyer will comply with Seller's Return Material Authorization policy and will ship Products to Seller suitably packed for shipment to prevent damage in transit in accordance with Seller'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 Buyer for the shipment. Special packaging requirements may incur additional costs for which the Buyer will assume responsibility.

#### 17. Warranty

Unless otherwise stated in Seller's proposal, Seller warrants that at the time of shipment to Buyer 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 Seller's installation, operating, maintenance and other written instructions. Buyer must notify Seller in writing during the warranty period of a nonconformance and, within thirty (30) calendar days of discovery of the nonconformance, Buyer must disposition the Product in accordance with Seller's written instructions. Seller's obligation and Buyer'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 Seller. All Products repaired or replaced are warranted only for the unexpired portion of the original warranty period. Buyer will comply with Seller's return material authorization policies and will ship Products to Seller suitably packed for shipment to prevent damage in transit in accordance with Seller's standard shipping practices. The warranties provided by Seller, and the remedies of Buyer, provided under this article, are exclusive and in substitution for, and Buyer 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 Seller hereunder will be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.

#### 18. Liability

The price allocable in this Purchase Order to any Product alleged to be the cause of any loss or damage to Buyer shall be the ceiling limit of Seller'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 Seller 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 Buyer any right or license under any present or future trademark, copyright, trade secret or other intellectual property right owned, controlled or licensed by Seller ("Intellectual Property") nor any right to use Seller's Proprietary Information (defined below) which is incorporated or embodied in Products other than as set forth in these Terms. If Buyer engages a third party to manufacture and/or sell any Products which incorporate or embody Seller'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 Seller's Intellectual Property, or (ii) an unauthorized use of Seller'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

Seller will not be liable to Buyer for any failure to meet its obligations due to any cause beyond Seller'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 Seller delay, then the date of Seller's performance will be extended by the period of such delay or Seller may cancel that affected Purchase Order with respect to such delayed Products.

#### 21. Termination for Default

Except for Buyer'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 Buyer or Seller 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 Buyer and accepted by Seller prior to the effective date of such termination.

#### 22. Termination for Convenience

Buyer may terminate, for its convenience, this Purchase Order, in whole or in part, by providing written notice to Seller at least ninety (90) days prior to the scheduled delivery date of a Product. During the period of notice, Seller shall (1) discontinue all work with respect to that portion of the Purchase Order terminated by Buyer, (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 Seller under this Section. In the event Buyer terminates any Purchase Order, in whole or in part, Buyer shall pay to Seller (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 Seller'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 Buyer and accepted by Seller 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 Buyer.

#### 23. Confidential Information

Buyer will not disclose to any third party the terms of any Purchase Order or the provisions contained in these Terms. All Seller 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 Seller (Seller'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 Seller. Buyer may use Seller's Proprietary Information only in relation to the application, operation and maintenance of Seller's Products by Buyer for purposes directly relating to these Terms.

#### 24. Tooling and Data

Seller 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 Seller to Buyer or originally supplied from Buyer to Seller.

#### 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 Buyer 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

Buyer and Seller 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. Buyer and Seller 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 Seller to Buyer 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. Buyer represents and warrants to Seller that it shall not export any Products covered by this Purchase Order in violation of United States export laws and regulations. Seller shall apply for and obtain any United States export licenses/approvals required to enable Seller to export the Products from the United States. Buyer shall assist Seller with any documentation needed in order to obtain such approvals.

## 29. Indemnity

Buyer shall defend, indemnify and hold harmless Seller, 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 Buyer, 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 Buyer without the prior written approval of Seller, 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 Seller 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 Seller 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 Seller, the address indicated on Seller's quotation or the applicable Seller facility to which the Purchase Order was sent, and if to Buyer, to Buyer's address on its Purchase Order.

35. Setoff

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