Terms and Conditions of Sale

1 Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires:

(a) "Affiliate" means with respect to any Person, any company, corporation, association or other Person, which, directly or indirectly, Controls, is Controlled by, or is under common Control with the first named Person, wherein "Control" means the power to direct the management or decisions of a person or entity whether through (a) the ownership of voting stock, including the direct or indirect ownership of 50% or more of the shares carrying the right to vote; or (b) the ability to appoint a majority of the board of directors or equivalent management body of such person or entity; or (c) any other lawful means. Notwithstanding the foregoing, in relation to Carrier, the term "Affiliate" shall include Persons directly or indirectly owned by and/or Controlled by United Technologies Corporation, having its registered office at Corporate Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, United States of America ("UTC"). If such Person is an individual, the term "Affiliate" shall include a relative of such individual;

(b) "Carrier" means the Carrier entity specified on the Sales Invoice;

(c) "Contract" means the contract constituted by the written quotation issued by Carrier, the Customer’s acceptance of the written quotation whether by way of its issuance of an order or otherwise, the relevant Sales Invoice and these terms and conditions;

(d) "Customer" means the Person named in the Sales Invoice;

(e) "Goods" means goods supplied by Carrier to the Customer from time to time;

(f) "ordere or "purchase order" means any order for or any statement of intent to purchase any Goods or Services placed by the Customer with Carrier;

(g) "Sales Invoice" means the sales invoice issued by Carrier to the Customer, and

(h) "Services" means the services supplied by Carrier to the Customer from time to time.

1.2 These terms and conditions:

(a) replace all prior terms and conditions issued by Carrier to Customer;

(b) take precedence over any terms set out in the Customer’s purchase order, to the extent of any inconsistency;

(c) are subject to any special conditions specified on the Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions;

(d) the expression "Person" includes each individual, body politic, corporation, association (incorporated or unincorporated), statutory authority or any other authority identified in the Customer, and where the Customer comprises more than one Person, these terms and conditions bind them jointly and severally.

2 Orders

2.1 Once an order has been accepted by Carrier, it cannot be cancelled by the Customer. The supply of Goods or Services is subject to availability. Carrier reserves the right to suspend or discontinue the supply of Goods or Services to the Customer without penalty. If Carrier is unable to supply all of the Customer’s order, these terms and conditions continue to apply to any part of the order supplied.

2.2 It is the Customer’s obligation to provide full and complete technical specifications along with their purchase order in order for the goods to be placed into production. Should the Customer fail to provide sufficient technical specifications within 15 calendar days of the date of the Customer’s purchase order, Carrier reserves the right to refuse to accept the order. If the Customer fails to provide sufficient specifications within 60 calendar days of the date of the Customer’s purchase order, Carrier reserves the right to cancel the order without liability or penalty.

3 Pricing

3.1 Where:

(a) a written quotation has been given by Carrier, the selling price is the price specified in the quotation and shall be valid for a period of 3 months from the date of such quotation and subject always to Carrier’s right to review the price where there is a material change in the costs of the raw materials applicable in the Goods and/or Services provided by Carrier as listed in the London Metal Exchange; or

(b) in any other case, the price for Goods supplied will be Carrier’s list price ruling at the date of shipping and the charge for Services supplied will be at Carrier’s prevailing rates at the time of supply. Prices are subject to change on notice prior to Carrier’s written acceptance of the Customer’s purchase order.

3.2 If the Customer pays a Sales Invoice by credit card, Carrier may charge, and the Customer agrees to pay, a surcharge for paying by credit card. The Customer will be notified of the relevant surcharge before paying a Sales Invoice by credit card.

3.3 In cases where Carrier intends to bill the Carrier for the supply of the Goods or Services, Carrier will do so on a percentage (1%) of completion of works basis and specify the billing schedule in its written quotation. A separate Sales Invoice will be raised for each progress payment in accordance with the billing schedule.

3.4 All prices are expressed exclusive of any applicable Goods and Services tax or value added tax, and freight or delivery charges, which amounts shall be added and payable at the same time as the price to be paid by the Customer in respect of the Goods and Services, unless otherwise agreed by the parties in writing.

3.5 Carrier will not be bound by any condition attaching to the Customer’s purchase order or acceptance of a sale unless Carrier in writing expressly accepts such conditions.

4 Payment

4.1 The Customer must make immediate payment upon receipt of the Sales Invoice. If the Customer has an approved credit account with Carrier, the Customer must pay for the Goods and Services supplied within 30 calendar days from the date of the relevant Sales Invoice unless otherwise agreed in writing by Carrier. Time is of the essence in respect of the Customer’s obligation to make payment for Goods or Services supplied by Carrier to the Customer.

4.2 If any part of a Sales Invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to set-off any claim against Carrier from moneys owing to Carrier.

5 Delivery

5.1 For Goods collected by the Customer from Carrier’s agents, the risk in the Goods passes to the Customer at time of collection.

5.2 If requested by the Customer, and agreed by Carrier, Carrier will deliver the Goods to an address at which point risk in the Goods will pass to the Customer. The Customer is responsible for:

(i) providing safe and adequate access to and from the delivery address;

(ii) the loading or unloading of Goods, and will pay for all damage and injury to any person and to any public or private property which may result from the Customer’s breach of this clause 5.2(i).

5.3 If Carrier nomimates their own vessel or vehicle to deliver the Goods to the Customer then risk will pass when the Goods are loaded onto the Customer’s nominated vessel or vehicle and Carrier shall be responsible for arranging the insurance of the Goods. Where the Customer has nominated its own vessel or vehicle for delivery Carrier will not be liable to Customer for any loss in the event of any failure in delivery or to arrange insurance.

5.4 Carrier reserves the right to deliver in instalments and all such instalments, where separately invoiced, must be paid for without regard to the delivery of subsequent instalments. A part delivery of an order will not invalidate the balance of the order.

5.5 The Customer acknowledges and agrees that delivery dates and times are estimates only and time is not of the essence in relation to delivery. While Carrier will use all reasonable endeavours to meet agreed delivery dates, Carrier shall not be liable to the Customer for delays due to circumstances outside of Carrier’s control or for any Indirect or Consequential Loss or Damage (as that term is defined in clause 15.2) should Carrier be delayed or prevented from delivering Goods, supplying Services, or otherwise performing any of its contractual obligations.

5.6 Subject to clause 5.5, delivery dates must not be varied once they have been agreed, without Carrier’s prior written approval. Should Carrier agree to postpone delivery, the Goods in question will be stored at the Customer’s risk and Carrier reserves the right to obtain payment from the Customer as though the goods in question have been delivered and to impose a weekly storage charge. Where delivery is postponed for more than 3 months, Carrier may increase any fixed contract prices to reflect Carrier’s then current list price.

5.7 Carrier may at its discretion sell any Goods still in its possession 3 months after the mutually agreed deferred delivery date and seek damages for any loss incurred by Carrier as a result of the deferment in the delivery date.

5.8 Legal and equitable ownership in the Goods shall not pass to the Customer until Carrier receives full payment for the Goods from the Customer.

6 Security

6.1 Where the Goods are resold by the Customer to a third party, the Customer must keep an account from the proceeds which is equal to the moneys owed to Carrier in a separate identifiable account as the beneficial property of Carrier and must immediately pay such amount to Carrier when due or upon request by Carrier.

6.2 This clause 6 applies notwithstanding any arrangement under which Carrier provides credit to the Customer and to the extent that there is any inconsistency between this clause 6 and such credit arrangement, this clause 6 prevails.

6.3 If the Goods and/or Services are to be provided in Australia;

(a) the Customer acknowledges that this clause 6 constitutes a Security Agreement in favour of Carrier in all Goods supplied by Carrier to the Customer and which have not become the property of the Customer absolutely and the proceeds of such Goods. The Customer acknowledges and agrees that, with respect to such Goods:

(i) Carrier may, without notice to the Customer, seek registration of its Security Interest pursuant to the PPSA as a Purchase Money Security Interest;

(ii) pursuant to section 275(6) of the PPSA, the Customer agrees that Carrier is not required to disclose to an interested person information regarding Carrier’s Security Interest unless required to do so pursuant to the PPSA or as otherwise required by law;

(iii) the Carrier will, upon the request of Carrier, promptly sign any documents, provide any further information and do anything else reasonably required by Carrier to enable perfection of Carrier’s Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;

(iv) the Carrier will not register a Financing Statement or Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Carrier;

(v) the Customer will not grant any other Security Interest or any lien over Goods;

(vi) the Customer will give Carrier not less than 14 days’ notice of any proposed change in their name or contact details; and

(vii) if the Goods are sold for the purposes of a capitalised terms used in clause 8.4. have the meanings given to those terms in the Personal Property Securities Act 2009 (Cth) ("PPSA") and

(c) to the extent permitted by law, the Customer waives its rights to receive any notices required under sections 95.118, 121(4), 130, 132, 135 and 1437 of the PPSA.
The Customer consents unconditionally to Carrier lodging a caveat or caveats noting its interest in any real property in support of the mortgage security granted to Carrier pursuant to clause 7.2.

A statement in writing signed by an authorised officer of Carrier setting out the money due or owing to Carrier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

The Customer hereby irrevocably appoints all and any of Carrier's officers or finance manager or a lawyer engaged by Carrier as Carrier's legal attorney for the purposes of doing all such acts and things and executing all such documents necessary to enable Carrier to register a non-lapsing caveat or other similar instrument over any such freehold or leasehold property and for such purposes to make a declaration of default duly executed for and on behalf of Carrier by such persons shall be deemed sufficient evidence of such default.

Installation

Carrier's Sales Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specifically provided for by Carrier.

Dimensions, Performance Data and Other Descriptive Details

9.1 Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, the descriptive literature or a catalogue may be subject to alteration.

9.2 Carrier reserves the right to make changes in the construction and/or design of Goods and not withstanding any such changes the Customer shall accept in performance of any order of Carriers current corresponding standard models.

Claims and Returns

10.1 To the extent permitted by law, all complaints, requests for return of Goods, claims, or notification of lost, incomplete, damaged, defective or non-compliant Goods must be submitted by the Customer to Carrier in writing within 7 days of the day of delivery or collection of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged, defective or do not comply with the Customer's purchase order.

10.2 While Carrier will use all reasonable endeavours to deliver Goods as specified in the Purchase Order, to the extent permitted by law, the Customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that Goods delivered align with the Purchase Order and notice of Carrier's claims in accordance with clause 10.1. Carrier is not liable to the Customer, any end user or third party for any Goods purchased and/or subsequently installed that are different to that specified in the Purchase Order unless the Purchase Order has been completed in accordance with clause 10.1.

10.3 Without limiting or restricting any statutory or implied warranties or consumer guarantees, Carrier will not accept the return of Goods unless the following conditions are satisfied:

(a) Carrier's written approval has first been obtained, which will include the issue of an authorisation number;
(b) the Goods are returned within 7 days of the issue of the authorisation number under clause 10.3(a);
(c) a copy of the relevant invoice is enclosed with the returned Goods;
(d) the Goods are returned in merchantable quality (as determined solely by Carrier) with the original packaging, and without damage or marks to the original packaging;
(e) the Customer pays shipping costs for the return of Goods to a warehouse or other premises nominated by Carrier and
(f) the Customer pays to Carrier a handling charge equal to 15% of the price paid for the Goods.

10.4 Unauthorised returns will not be accepted. The Customer will be responsible for all damage incurred during return shipment. The Customer shall not deduct the amount or any anticipated credit from any payment due to Carrier.

Warranty

11.1 Certain legislation may imply warranties, terms or conditions that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent to which Carrier is entitled to do so, its liability is limited at its option to:

(a) Carrier's written approval has first been obtained, which will include the issue of an authorisation number;
(b) the Goods are returned within 7 days of the issue of the authorisation number under clause 10.3(a);
(c) a copy of the relevant invoice is enclosed with the returned Goods;
(d) the Goods are returned in merchantable quality (as determined solely by Carrier) with the original packaging and without damage or marks to the original packaging;
(e) the Customer pays shipping costs for the return of Goods to a warehouse or other premises nominated by Carrier and
(f) the Customer pays to Carrier a handling charge equal to 15% of the price paid for the Goods.

Claims and Returns

11.2 Subject to clause 11.1, where Goods supplied by Carrier are covered by a written "Express Terms and Conditions", the terms and conditions of any such contract shall take precedence over these terms and conditions.

11.3 The Customer expressly acknowledges and agrees that it has not relied upon and Carrier is not liable for any advice given by Carrier, its agents or employees in relation to the suitability for any purpose of Goods or materials supplied by Carrier, unless that advice is expressly confirmed in writing by Carrier as a condition of the Contract.

12. Force Majeure

12.1 Carrier shall not be in breach of the Contract or be liable to the Customer if Carrier fails to perform or delays the performance of an obligation as a result of an event beyond its reasonable control, including, but not limited to, strikes, industrial disputes, fire, flood, act of God, war, invasion, vandalism, sabotage, explosion, accident, riot, delays beyond the Carrier's control, liquification, embargo, environmental or other factors, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of any governmental or governmental agency.

13. Sponsored Travel

13.1 Where the provision of the any Goods and Services by Carrier under these terms and conditions requires Carrier to provide any sponsored travel to the Customer, each Carrier and the Customer agree that the nature and extent of the sponsored travel, including, without limitation, the number and identity of participants, locations visited, and activities undertaken, shall be limited to activities directly related to the provision of such Goods and Services, subject to mutual agreement of Carrier and the Customer. Carrier policy and internal procedures may restrict the Customer's use of Carrier's policies, as well as all applicable laws and regulations, including, without limitation, all applicable laws and regulations prohibiting bribery. For the purposes of this clause 13, "sponsored travel" means any arrangement by the Customer, its employees or agents, for the Customer's use and travel at the Customer's cost, including transportation.

14. Personal Information

14.1 The Customer acknowledges, confirms and agrees:

(a) in connection with Carrier's delivery of the Goods and/or Services, the Customer will need to provide certain personal information of its employees and Carrier will process such information for the following purposes:
(i) to perform Carrier's obligations under the contract constituted by these terms and conditions;
(ii) to consolidate, review, assess and evaluate Carrier's products and Services;
(iii) to respond to a legitimate legal request from law enforcement authorities or other competent regulatory authorities;
(iv) to support the sale or transfer of all or part of Carrier's business or assets (including, through bankruptcy or insolvency);
(v) to investigate suspected or actual illegal activity; and/or
(vi) to comply with Carrier's obligations under applicable laws and regulations.
(b) The Customer shall have obtained the consent of such of its employees, and employees of its affiliates, agents and other partners whose personal information it has provided to Carrier in connection with the purposes listed in clause 14.1(a), and the terms on which Carrier will process such personal information as set out under this clause 14 ("Personal Information").

(c) Carrier, and its parent company UTC, are global companies with locations in many different countries. Accordingly, Carrier may transfer the Personal Information from one legal entity to another or from one country to another within the UTC group of companies in order to accomplish the purposes listed above. These countries include, at a minimum, the United States, the member states of the European Union, Canada, and other countries, including some in Asia. Carrier will transfer the Personal Information consistent with applicable legal requirements only to the extent necessary for the purposes set out above.

(d) Carrier may share the Personal Information it has obtained with:
(i) its affiliates, with a view to reviewing, assessing and evaluating its products and service offerings; and
(ii) service providers UTC has retained to perform Services on its behalf, subject always to UTC having contractually restricted such service providers on processing the Personal Information on a basis consistent with the terms set out under this clause 14.

(e) Carrier relies on available legal mechanisms to enable the legal transfer of Personal Information across borders and will comply with the Binding Corporate Rules, a copy of which is available at http://www.utc.com/Documents/BCRs/English.pdf, to authorise transfer.

(f) The Customer may view the full text of Carrier's privacy policy, which sets out how we collect and deal with your personal information at https://www.utc.com/building-solutions/privacy/; request from the Local Carrier office for any questions in relation to privacy.

14.2 In this clause 14, personal information means information or an opinion relating to an identified or identifiable natural person.

Liability

15.1 To the extent permitted by law, the aggregate liability of Carrier in respect of the Contract (including to the Customer), whether in contract, tort (including negligence) or otherwise, shall be limited to the value of the Goods and Services under the Contract, save and except for any injury to, or death of a person.

15.2 Subject to clause 11, Carrier is not liable for any indirect or consequential damage, loss or damage arising in tort, contract or otherwise (even if due to the negligence of Carrier or any of its employees or contractors or agents) and whether arising out of or in connection with the supply of Goods and Services (including loss of anticipated savings or lost profit, loss of revenue, loss of opportunity, relations or reputation, or business), loss of profits, loss of goodwill or increased cost of workings ("Indirect or Consequential Loss or Damage")

Termination, Repossess of Goods & Recovery of Debt

16.1 If the Customer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or is or becomes or is reasonably suspected by Carrier to be subject to an insolvency event ("Insolvency Event"), then:

(a) the Customer will be in default under these terms and conditions;
(b) the balance of the Customer's account with Carrier will become immediately due and payable;
(c) Carrier will become immediately entitled to enforce any security, charge or security over any goods subject to the Customer's title or other security interests provided to Carrier in connection with the Customer's account with Carrier;
(d) Carrier may (without limiting any other right or claim it may have against the Customer) do any or all of the following:
   (i) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue; and
   (ii) to comply with Carrier's obligations under applicable laws and regulations.

16.2 Termination

If the Goods and Services are to be supplied anywhere else, at the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vi) from time to time plus two percentage points; or

if the Goods and Services are to be supplied anywhere else, at the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vi) from time to time plus two percentage points; or

if the Goods and Services are to be supplied anywhere else, at the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vi) from time to time plus two percentage points; or

17. Alteration to Terms and Conditions

17.1 The Customer is not entitled to amend or vary any terms and conditions at any time by written notice to the Customer's place of business or by posting an amended copy on Carrier's website [insert local website address] and the Customer will be bound by any such amendments in respect of any further transactions with Carrier or by any Receiver, Manager or Administrator appointed over all or any part of its assets. For the avoidance of doubt, title in the Goods immediately re-vest in Carrier upon Carrier asserting its rights in respect of this clause 15.6.

18. Governing Law

18.1 These terms and conditions and any contract including them shall be governed by:

(a) if the Goods or Services are supplied in Australia, the laws of the State of Victoria, Australia;
(b) if the Goods or Services are supplied in any other country, the laws of the country in which the Goods or Services are supplied.

18.2 Last Updated and Effective From: 22 March 2018
The parties irrevocably submit to the exclusive jurisdiction of the courts of or in the jurisdiction set out in clause 18.1 above, and the court of appeal from such courts in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.

Carrier is committed as a matter of company policy to strict compliance with the applicable laws and regulations of the countries in which Carrier conducts business, including, but not limited to, United States of America’s export control and trade sanction laws and regulations and the Customer understands and agrees that:

(a) All sales and distribution of Carrier’s products may constitute an export, re-export, or retransfer, and such transactions must be in accordance with applicable export and trade control and sanctions laws and regulations (“Export Control Laws”) of all applicable countries;

(b) The Customer represents that they are aware of and agree to comply fully with the applicable Export Control Laws at the time of the export, re-export, transfer, disclosure or provision of products (including software, technology or services). The Customer understands and agrees that Carrier’s products may not be sold, transferred, exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan or Syria. For Carrier’s products that originate in the U.S. or incorporate or include U.S.-origin content, components, accessories or software, these items are subject to the U.S. Export Administration Regulations (“EAR”) administered by the U.S. Department of Commerce, and various economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”). For Carrier products that originate in the EU or incorporate EU-origin content, these items are subject to EU Council Directives, Regulations and laws and regulations implemented by EU Member States as applicable, as well as EU sanctions and Restrictive Measures.

(c) The Customer warrants and represents that, the Customer is aware of U.S. and other applicable list-based and program-based sanctions programs, and will refrain from selling or transferring Carrier products or services to any party identified on such list or sanction program.

(d) Where the Customer purchases Carrier products or services with the intent to resell or transfer those items to a specific known customer or end-user, the Customer shall either:

(i) Provide the identity of all known parties to Carrier, so that Carrier may screen all parties to ensure compliance with U.S. and other applicable laws; or

(ii) Conduct sufficient screening to ensure that the transaction does not involve: (a) any “Specially Designated National (SDN)” as determined by OFAC, or (b) any person or entity identified as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government, the EU, or any other country or government whose laws apply to the transaction, to the extent that designation prohibits the transaction.

(e) The Customer shall notify Carrier immediately, in writing, if any of the Customer customers, dealers, resellers or sub-tier distributors who have been designated as an SDN, debarred, sanctioned or designated as a denied party and have provided products, performed production activities, or performed services under these terms and conditions.

(f) The Customer agrees to provide information and support to Carrier as necessary for Carrier to comply with Export Control Laws. The Customer shall notify Carrier promptly if the Customer is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the applicable Government where Carrier is located and/or the Territory, or (ii) the Customer is listed or is proposed to be listed by the U.S. Government in any “denial orders,” as a “blocked person,” as a “specially designated national,” or as a “specially designated terrorist” for U.S. export administration purposes (collectively, “Debarment”). The Customer shall indemnify and hold Carrier harmless against any loss or damage suffered by Carrier as a result of the Customer’s Debarment.

(g) Carrier shall not be deemed to be in breach or default of these terms and conditions because of Carrier’s compliance with Export Control Laws to which it is required, or to which it may become, subject to. In no event shall Carrier be liable for any special, incidental, exemplary, or consequential damages, including but not limited to, lost profits, fines, or penalties imposed on the Customer by governmental authorities, arising in connection with Carrier’s performance under these terms and conditions, including but not limited to delays, fees, or limitations imposed in connection with Export Control Laws.

(h) Carrier will not provide warranty, repair, replacement, or guarantee services for Products exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan, or Syria. Furthermore, Carrier will not provide warranty, repair, replacement, or guarantee services for actions that would otherwise violate Export Control Laws. If Customer extends to its customers any warranty that is broader in scope than the Limited warranty provided by Carrier, the Customer shall be solely responsible for any and all costs, expenses, liabilities, obligations, and damages resulting from the extension of such warranty.

(i) Carrier or its Affiliates shall not be required to honour any orders which Carrier or its Affiliates reasonably determine were likely to have resulted from improper activity by the Customer.

Without limiting any other provision of these terms and conditions, the Customer, its owners, directors, employees, contractors or agents must:

(a) comply at all times with applicable laws, including laws prohibiting collusion, conflicts of interest, corruption and unfair competition;

(b) refrain from offering, promising, attempting to provide or providing (directly or indirectly) any Carrier employee, any employee of its Related Body Corporates, or any government official any ownership or financial interest in the Customer; and...