

**CELTECH CORP.**  
**PURCHASE ORDERS ISSUED BY CELTECH CORP.**  
**TERMS AND CONDITIONS**

**I. DEFINITIONS** – as used throughout the Purchase Order, and this Contract document, the following terms shall have the meaning set forth below:

“**Buyer**” means Atec, Inc. or its subsidiaries Celtech Corp., affiliates or assigns, as identified on the Purchase Order and/or Contract documents.

“**Contract**”, “**Purchase Order**”, “**Order**” means the contracting instruments or documents, including change notices, supplements, amendments, directions, instructions, or modifications thereto.

“**Seller**” means the individuals, partnerships, corporation or associates contracting to perform the work hereunder for Buyer, synonymous with “**Supplier**”, “**Subcontractor**”, “**Vendor**” and “**Offeror**”.

“**Goods**”, “**Supplies**”, “**Services**” or “**Items**” means any effort supplied by Seller incidental to the sale of goods by Seller under the Order including, without limitation, installation, repair, and maintenance services. The term “**Services**” shall also include without limitation any effort specifically requested by the Order, including all associated efforts such as design engineering, repair, maintenance, technical support, construction, consulting, professional or other services.

“**Subcontract**” unless provided otherwise in a purchase order, means all contracts placed by the Seller or lower tier suppliers for the specific purpose of performing any portion of the work under this Order, and includes but is not limited to Purchase Orders and changes or modifications thereto.

**II. TERMS AND CONDITIONS**

**1. The Contract** – The documents that form the contract between Buyer and Seller are the Buyer’s Purchase Order (P.O.) issued to Seller, all documents referenced in P.O. (including, without limitations, these terms and conditions, drawings, specifications, instructions, quality assurance requirements and any other referenced documents), all drawings, specifications and other documents referenced in the Buyer’s request for quotation issued to Seller for the Contract (unless and to the extent such documents are excluded from the Contract by express provisions in , and not by mere omission from, the P.O.), supplements issued to Seller by Buyer and all documents referenced in any Contract documents shall be governed by the (general) terms and conditions set forth herein, whether or not expressly referenced in the text of the Purchase Order, and shall be considered incorporated therein by reference. Where there is any conflict or inconsistency between the provisions in one or more of the Contract documents, the Buyer must be notified immediately for resolution.

**2. Acceptance** – The acceptance by Seller that forms the Contract shall be deemed conclusively to have occurred upon Seller’s acknowledgment of the P.O., shipment of any goods, performance of any services or commencement of any work on supplies or goods covered by the Contract. Any acceptance by Seller on purported terms and conditions that differ in any way from the provisions of the Contract shall be effective to form and bind Seller to the Contract, but such terms and conditions shall not become part of, or in any way, alter, amend or otherwise modify any of the provisions of, the Contract. Any shipment of goods, performance of services, or commencement of work on supplies by Seller shall be deemed to be only upon the terms and conditions contained in the Contract, except to the extent that Buyer may otherwise expressly consent in writing. Seller agrees that Buyer’s payment for any shipment of goods or similar act of acceptance of Buyer shall not be claimed or construed to constitute consent to any such different terms.

**3. Delivery-**

(a) Delivery must be in strict compliance with the schedule contained in the Contract and shall be made by Seller at such times and places and of such items and quantities as may, from time to time, be specified by Buyer. If Seller fails to meet its scheduled delivery dates and Buyer elects to call for expedited deliveries, Seller will pay the difference between the method of production and/or shipping specified and the actual expedited costs incurred. Seller shall be responsible for any additional charges resulting from deviation from Buyer’s instructions. If Seller fails to make delivery promptly and regularly, as required under the Contract, Buyer may, in addition to other remedies available at law, terminate the Contract by giving notice to Seller. Title and risk of loss shall remain with Seller until goods are delivered to the F.O.B. point specified in the Contract. Notwithstanding such delivery, Seller shall bear risk of loss or damage to goods purchased hereunder from the time that Buyer gives notice of rejection of goods, pursuant to the inspection provisions on this Contract. If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Buyer in writing, giving pertinent details; provided, however, that such data shall be informational only in character and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies of Buyer provided by law or the Contract. Parts fabricated in excess or in advance of Buyer’s release are at Seller’s risk. Buyer 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 date specified for delivery.

(b) Packaging and packing of items shall be in a manner that ensures maximum protection from vibrations, abrasions, damages, forklift handling or any other condition reasonably encountered during transit. Seller shall insure safe arrival of items under

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contract by secured, dependable lowest transportation cost, conforming with requirements of common carriers and, in any event, comply with Buyer's minimum specifications set forth in the P.O.

**4. Inspection** – Seller shall maintain an inspection and documentation system acceptable to Buyer covering the goods furnished hereunder. Buyer (and if a Government contract number or other identification appears on the P.O., the Government) shall have the right to inspect the goods supplied hereunder at any time during the manufacture or fabrication thereof at Seller's facility or elsewhere is requested. Such inspection may include, without limitation, raw materials, components, work in process, and completed products as well as drawings, specifications, work instructions, quality assurance documentation, and released data. Final inspection and acceptance shall be after delivery to the delivery point designated by the Buyer. If any inspection or test by Buyer at Seller's facility or elsewhere, is required by Buyer, Seller shall provide reasonable facilities and assistance for the inspection personnel. Buyer may reject all goods supplied hereunder, which are found to be defective. Goods so rejected may be returned to Seller at Seller's expense. No inspection, examination or test, regardless of extensiveness or type, and no approval given in connection with any such inspection, examination or test, whether by Buyer or the Government and whether under the Contract or another Contract for the same or similar goods, shall relieve Seller, or be claimed by Seller to relieve it, of any obligation to comply fully with all requirements of the Contract, including the obligation to produce goods that conform to all requirements of the drawings, specifications and other Contract documents. At Buyer's request, Seller shall repair or replace defective goods at Seller's expense. Failure to inspect goods, failure to discover defects in goods or payment for goods shall not constitute acceptance of goods or limit any of Buyer's rights, including without limitation those under the "Warranty" provisions of the Contract. In the event inspection reveals a defect, and schedule urgency requires that the defect or defects be corrected by Buyer to support production, all cost of such correction, including without limitation, installation and removal, will be charged to Seller; such charges will also include time and material and appropriate indirect and overhead expenses, with right of offset retained.

**5. Overshipment** – Goods shall not be supplied in excess of quantities and shipping tolerance, if any, specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities and unless Seller agrees to pay for such costs, the over-shipped material will be retained by Buyer at no additional cost.

**6. Prices** – Unless otherwise specified, prices are for delivery per ICC Incoterms - DAP, at the place shown on the face of the Purchase Order and are exclusive of state sales-and-use taxes, V.A.T., and other fees not shown on the Purchase Order. No charges will be allowed for packing, crating, drayage, or storage. Seller warrants that prices charged for the goods are not higher than those charged to any other customer, including the Government, for goods of like grade and quality in similar or lesser quantities.

**7. Payment** – Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for material and supplies delivered to and accepted by Buyer. Any adjustments or offsets to Seller's invoice due to shortages, rejection or other failure to comply with the provisions of this Contract, or under any other order or Contract between Buyer and Seller, may be made by Buyer before payment. Discount periods shall commence ten (10) days after the latest of scheduled delivery, actual delivery, or receipt of invoice. No charges will be honored unless specified on the face of the P.O. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item. No payment shall be due to Seller until Seller has provided all required documentation.

**8. Warranty** – Seller expressly warrants that all goods and services covered by an order will conform to the specifications, drawings, quality assurance requirements or other descriptions furnished by Buyer and/or U.S. Industry Standards, and will be merchantable, of good material and workmanship, free from defect. Such warranties shall be effective for a period of time equal to the Seller's standard warranty period in effect from the date of shipment, but in no case shall the warranty period cover less than ninety (90) days of Buyer's (or Buyer's and End-User's) actual usage. The rights and remedies of the Buyer concerning latent defects shall exist indefinitely, and shall not be affected in any way by any terms and conditions of the Contract, including this clause. Buyer may at its option and in addition to other remedies available at law, either (i) return for credit, (ii) require prompt correction or replacement of the defective or nonconforming goods, or (iii) have the defective item corrected or replaced, at Seller's expense. Goods required to be corrected or replaced should be subject to the provisions of this paragraph and the paragraph of this Contract document entitled "Inspection" in the same manner and the same extent as goods originally delivered under the Contract. In addition to correcting or replacing defective or nonconforming goods, Seller shall reimburse Buyer for all costs and expenses incurred by Buyer in connection with inspection and discovery of the defect, identifying and correcting the cause of such defect, and all other activities reasonably undertaken by Buyer to obtain conforming goods.

**9. Compliance** – Seller will comply with the Fair Labor Standards Act of June 30, 1932 (29 USC 201-209), as amended. Seller also warrants that in the performance of any order, Seller will comply with all applicable statutes, rules, regulations, and orders of the United States and of any State or political subdivision thereof, and agrees to indemnify Buyer against any loss, cost, damages, or liability by reason of Seller's violation of this warranty. All purchased materials used in part manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale.

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**10. Changes** – Buyer may at any time, by a written notice and without notice to sureties or assignees, make changes within the general scope of a Contract. If any such changes causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Contract, whether changed or not changed by any such order, or affects any such order, or affects any other provisions of the Contract, an equitable adjustment shall be made in the price or delivery schedule, or both, and in such other provisions of the Contract as may be affected, and the Contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this paragraph shall be asserted in writing within fifteen (15) days from the date of receipt of the written notice directing the change. Where the cost of property made obsolete or surplus as a result of a change is included in the equitable adjustment, the Buyer shall have the right to prescribe the manner of disposition of such property. The amount of any price increase from a change shall be based on the actual reasonable cost to perform the change. The amount of any price decrease from a change shall be based on the reduction in the Seller's cost that reasonably should have occurred as a result of the change. Seller shall maintain complete and accurate accounting records properly documenting the foregoing cost. Such records shall be produced for examination and copying by Buyer within ten (10) days of a request by Buyer. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" paragraph of this Contract document. However, nothing in the paragraph shall excuse the Seller from proceeding with the Contract as changed. Any action taken by Seller, which affects any provisions of the Contract, including delivery and price, whether or not accomplished with the concurrence of Buyer's employees, shall not entitle Seller to an equitable adjustment in accordance with the paragraph, unless such action has been specifically directed by written notice issued by Buyer.

**11. Buyer Furnished Property** – Buyer may, from time to time, furnish property to Seller for performance of a Contract. Unless otherwise provided in the Contract or agreed to in writing, property of every description including all tools, molds, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer and Seller shall indemnify and save harmless Buyer from all liens and claims against said property arising from any cause. Property other than material shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as property of Buyer (by name) and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this Contract, it shall be subject to inspection and removal by Buyer, and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship ICC Incoterms - EXWorks its plant to Buyer (or Buyer designated location) in same condition as originally received by Seller, reasonable wear and tear expected. Buyer may at any time reimburse Seller for the cost of part of all special tooling and special test equipment paid for by Seller and, upon payment therefore, Buyer shall become the owner, entitled to possession at the completion of the Contract or such earlier date as the parties may agree.

**12. Stop Work Order** – Buyer may at any time by written notice to Seller, require Seller to stop all or any part of the work called for by this Contract for a period of up to ninety (90) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the 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, Buyer shall either cancel the Stop Work Order, or terminate the work covered by this Contract as provided in the "Termination for Convenience"; or the "Termination for Default" paragraphs of the Contract document, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order provided that Seller shall give Buyer three (3) days written notice prior to resumption after an expired Stop Work Order. Any equitable adjustment in the contract price shall be determined as provided in the "Changes", paragraph 10 of this Contract document.

**13. Termination for Convenience** – Buyer may at any time by written notice terminate all or any part of the Contract for Buyer's convenience. If the Contract is terminated, in whole or in part for Buyer's convenience, Seller shall be paid an amount to be mutually agreed upon, which shall be adequate to cover the actual reasonable cost paid by Seller for the actual labor and material reasonably used by Seller to perform the work under this Contract to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Seller for (i) any anticipatory profits related to work under this Contract not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. In no event shall the total amount paid under the provision of this paragraph exceed the prices set forth in the Contract for the work terminated.

**14. Termination for Default** –

(a) Buyer may, subject to the provisions of subparagraph (c) below, by written notice of default to Seller, terminate the whole or any part of the Contract in any one of the following circumstances: (i) if Seller fails to make delivery of the goods or to perform the Contract within the time specified therein or any approved extension thereof; or (ii) if Seller fails to perform any of the other provisions of the Contract, or in the Buyer's opinion, so fails to make progress as to endanger performance of the Contract in

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accordance with its terms, and does not cure such failure within a period of ten (10) days (or longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.

(b) In the event Buyer terminates the Contract in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for the same, including without limitation, all costs and expenses of the type specified in the "Warranty" paragraph of this Contract document: It is further provided, that Seller shall continue the performance of the Contract to the extent not terminated hereunder.

(c) If the Contract is terminated as provided in subparagraph (a) above, Buyer, in addition to any other rights provided in the Contract, may require Seller to transfer title and deliver to Buyer or the Government or other ultimate user, in the manner and to the extent directed by Buyer, (i) any completed goods, and (ii) such partially completed goods and materials, parts, tools, molds, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated; and Seller shall upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer or the Government has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the paragraph of this Contract document entitled "Disputes."

(d) If, after notice of termination of the Contract under the provisions of this paragraph, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience" paragraph of this Contract document.

(e) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law under the Contract.

**15. Indemnification** – If the Contract is issued under a Government prime contract or subcontract, Seller shall indemnify Buyer against and hold Buyer harmless from all claims, expenses, and losses arising out of performance of this Contract by Seller (i) when such claims, expenses, and losses result from the failure of Seller to furnish to Buyer, in accordance with the provisions of the relevant regulations, cost and pricing data, which is accurate, complete, and current, at the time of Seller's and Buyer's agreement to the negotiated price or at the time when Buyer or Government requests a reaffirmation of the same and, (ii) when such claims, expenses and losses result from Seller's failure to comply with the rules, regulations, and standards of the Government in connection with covered contracts.

**16. Data** – All drawings and specifications, furnished or paid for by Buyer shall be the property of Buyer, shall be subject to removal at any time without additional cost upon demand by Buyer, shall be used only in filling orders from Buyer and shall be kept separate from other drawings and specifications, and identified as a the property of Buyer. The information contained in reports, drawings, documents or other records which are furnished to Seller by Buyer relative to a Contract, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion, termination, or cancellation of the Contract. All data provided by Buyer to Seller in furtherance of an Order shall be reasonably protected from destruction and unnecessary dissemination by Seller. Seller shall return all drawings and specifications to Buyer, in the event Buyer requests return of any such items, within thirty (30) days after the effective date of completion, terminations, or cancellation. Any such data of Buyer retained by Seller shall remain subject to the foregoing restrictions on use, reproduction, and disclosure. Upon termination of the Contract, whether for convenience or default, Buyer may, at Buyer's option, use, on a non exclusive basis, all drawings, documents or other records related to the Contract whether created by Buyer or Seller without further compensation to Seller. Seller may not disclose to others existence of a Contract or the items to be supplied thereunder without Buyer's written consent, except to subcontractors, who shall have the same responsibility.

**17. Patents and Copyrights** – Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and agents, against any liability, claim, demand, suit or proceeding, including without limitations, costs, expenses and attorney fees, for or by reason of any actual or alleged infringement of any patent or copyright arising out of the manufacture, use, sale, delivery, or disposal of goods furnished under any Contract and not attributable to Seller's compliance with Buyer's specific written instructions. The provisions of this paragraph shall apply to each notice or claim of patent or copyright infringement relating to the performance of such Contract, of which Seller has knowledge, regardless of whether or not Buyer has given Seller notice of such claim. Where payment is made for experimental development, or research work performed under a Contract, Seller shall disclose and does hereby assign to Buyer all inventions resulting therefrom and does grant Buyer the right to use for any purpose, all data specified to be delivered thereunder.

**18. Work on Buyer's Designated Premises** – In the event that Seller, Seller's employees or agents, or Seller's subcontractors enter Buyer's designated premises for any reason in connection with a Contract, Seller and such other parties shall observe all security requirements and all plant safety regulations. Seller shall defend, indemnify and hold Buyer harmless from all claims, actions, demands, loss and causes of action, arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees, or agents. Seller, and any subcontractor in connection with the Contract, shall carry Workmen's Compensation and Employer's Liability Insurance to

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cover Seller's and subcontractor's legal liability on account of accidents to their employees. Seller and Subcontractor shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering legal liability of Seller and the subcontractor on account of accidents arising out of the operations of Seller or the subcontractor and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer, certificates from Seller's insurers showing such coverage in effect and showing Buyer as a Named Insured party on such certificate(s) if requested. Seller agrees to give Buyer ten (10) days prior written notice of cancellation of the coverage.

**19. Assignment and Subcontracting** – Seller shall not assign a Contract or any portion of a Contract, nor shall Seller subcontract for completed or substantially completed goods or services purchased thereunder without the prior express written consent of Buyer. No assignment or subcontract by Seller, including any assignment or subcontract to which Buyer consents, shall in any way relieve Seller from complete and punctual performance of this Contract, including without limitation all of Seller's obligations under provisions of the "Warranty" paragraph of this Contract document.

**20. Configuration Control** – Seller shall make no changes in design, manufacturing or assembly processes or source of supply, after approval of the first production test item or after acceptance of the first completed end item, without the written approval of the Buyer. Seller agrees that any approval by Buyer of the first production test item or any acceptance by Buyer of the first completed end item shall not in any way relieve Seller from performing all the requirements of a Contract, including Seller's obligations under the provisions of the "Warranty" paragraph of this Contract document.

**21. Notices** - All notices required or permitted to be given hereunder or by any Contract shall be deemed to be properly given if delivered in writing, personally or sent by United States certified or registered mail, addressed to Seller or Buyer, or as the case may be, at the addresses set forth on the face of the P.O., with postage thereon fully prepaid. The effective time of notice shall be two (2) business days following date of mailing. Facsimile transmission is an acceptable alternate method of notification provided that both Buyer and Seller mutually agree and sender obtains a return confirmation of receipt in writing.

**22. Waiver** – No delay or omission hereto in the exercise of any right or remedy hereunder shall impair such right or remedy or be construed to be a waiver thereof. No waiver by Buyer of any breach of any Contract provision or the granting of an extension for performance thereunder shall be deemed to be a waiver of any other or subsequent breach. Seller agrees that it will not claim that Buyer has waived any of Seller's performance requirements under any Contract, and no such waiver shall be effective to relieve Seller from complete and punctual performance of such requirements, unless such waiver is expressly stated in writing and signed by Buyer.

**23. Disputes** – Pending the final resolution of any dispute involving the Contract, Seller shall proceed diligently with the performance of work, including delivery of goods in accordance with Buyer's direction. Seller shall submit to authorized Buyer officer a written request for Buyer's final decision regarding the disposition of any dispute between the parties relating to the Contract, unless the Buyer has already rendered such as final decision. The Buyer's final decision shall be expressly identified as such and shall be in writing and shall be signed by Buyer except that Buyer's failure to render a final decision within ninety (90) days after receipt of Seller's request shall be deemed a final decision adverse to Seller's contentions.

Buyer's final decision shall be conclusive and binding regarding the dispute. If the final decision is deemed unacceptable, Seller may proceed in accordance with the paragraph herein entitled "Arbitration". Seller shall cooperate fully with Buyer in seeking resolution of any disputes involving the Contract. Buyer and Seller shall bear their own costs of processing the dispute.

**24. Applicable Law** – The validity, performance and construction of this Contract shall be governed by and construed in accordance with the laws of the State of Texas, or New Mexico.

**25. Arbitration** – For any and all claims, disputes, or other matters in question, arising out of, or relating to, any Contract, or the breach thereof, the parties shall first attempt to resolve the dispute amicably and informally between them. If the parties cannot resolve the dispute informally, then the dispute shall be submitted to the American Arbitration Association of Houston, Texas or Carlsbad, NM for binding arbitration under Commercial Rules. Any appeal shall have jurisdiction and venue in the state and federal courts of Houston, Harris County, Texas, or Carlsbad, Eddy County, New Mexico.

**26. Government Contracts** – If a Contract is issued under a United States Government prime contract or subcontract, the clauses listed in the "Purchase Order Terms and Conditions Attachment for Government Contracts covered by the Federal Acquisition Regulations" in effect on the date of the Contract are incorporated herein by reference, and the terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth herein.