

## **TERMS & CONDITIONS**

### **TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS**

**1. FORMATION OF CONTRACT.** This proposed contract, which incorporates by reference these Terms and is Buyer's offer to purchase the goods and/or services (collectively, "Goods") described in this offer. **Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or supplements this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. Seller's provision of the Goods shall be governed solely by this contract.**

### **2. SCHEDULE.**

**a.** Seller shall strictly adhere to the shipment and/or delivery schedules specified on the Purchase Order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this contract. Any added premium transportation costs are to be borne by Seller.

**b.** Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized, in writing, by Buyer's Authorized Procurement Representative.

**c.** Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for all of the reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Buyer's Proprietary Information or Materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" article of this contract, it will not sell or offer such Goods for sale to anyone other than Buyer without Buyer's prior written consent, which consent may be withheld at Buyer's sole discretion.

### **3. PACKING AND SHIPPING.**

**a.** Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Buyer may charge Seller, and Seller shall be responsible, for damage to or deterioration of any Goods resulting from improper packing or packaging. Unless this contract specifies otherwise, the price includes shipping charges for Goods sold F.O.B. destination. Unless otherwise specified in this contract, Goods sold F.O.B. place of shipment shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped

except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating.

**b.** Unless this contract specifies otherwise, Seller will ship the Goods in accordance with all of the following instructions:

**i.** Shipments by Seller or its subcontractors must include packing sheets containing Buyer's contract number, line item number, work order number or job ID number, Purchase Order number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment containing hazardous and nonhazardous materials must have separate packing sheets for the hazardous and nonhazardous materials. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods. Items shipped on the same day will be consolidated on one bill of lading or air bill unless otherwise authorized in writing by Buyer's Authorized Procurement Representative. The shipping documents must describe the material according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all Government bills of lading will be surrendered to the origin carrier at the time of shipment.

**ii.** Seller will not insure any FOB origin shipment unless authorized, in writing, by Buyer.

**iii.** Seller will label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g., box 1 of 2, box 2 of 2).

**iv.** Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer.

**v.** Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.

**vi.** If Seller is unable to comply with the shipping instructions in this contract, Seller will contact Buyer, in writing, for instruction or information.

**4. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under this contract, Seller shall permit Buyer, at its election, to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer, in writing, of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer, in writing, of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.

**5. SELLER'S NOTICE OF DISCREPANCIES.** Seller shall notify Buyer in writing when discrepancies in Seller's process or Goods are discovered or suspected regarding Goods delivered or to be delivered under this contract.

## **6. INSPECTION.**

- a.** At no additional cost to Buyer, Goods shall be subject to inspection, surveillance and test at reasonable times and places, including at Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work.
- b.** Seller shall maintain an inspection system acceptable to Buyer for the Goods purchased under this contract.
- c.** If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these functions.

## **7. ACCEPTANCE AND REJECTION.**

- a.** Buyer shall accept the Goods or give Seller written notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any one or more of payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this contract or otherwise impair any rights or remedies of Buyer.
- b.** If Seller delivers non-conforming Goods, Buyer may at its sole option and at Seller's expense (i) return the Goods for credit or refund; (ii) require Seller to promptly correct, repair or replace the Goods, (iii) correct or repair the Goods; or (iv) obtain replacement Goods from another source.
- c.** Seller shall not redeliver corrected or rejected goods without disclosing, in writing, the former rejection or requirement for correction. Among other things, Seller shall disclose and set forth any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct in writing.
- d.** All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered by Buyer from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this contract or otherwise.

**8. WARRANTY.** Seller warrants that all Goods furnished under this contract shall conform to all designs, specifications and requirements of this contract and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to designs, specifications and requirements furnished by Buyer, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. Buyer may, at its option, either return for credit or refund, or require prompt correction or replacement of the defective

or non-conforming Goods. Return to Seller of defective or nonconforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article and the "Inspection" article of this contract in the same manner and to the same extent as Goods originally delivered under this contract, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods, and/or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the contract price.

**9. TAXES.** Unless this contract specifies otherwise, the price of this contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges, duties and exactions imposed on or measured by this contract or the transactions contemplated by this purchaser order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges, duties or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

**10. INVOICES AND PAYMENT.** Unless otherwise authorized by Buyer's Authorized Procurement Representative, Seller shall issue a separate original invoice for each delivery that shall include Buyer's contract number, line item number, work order or job ID number, item number, description, and quantity. Seller shall forward its invoice to the address specified on the Purchase Order. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Unless authorized in writing from Buyer, payment terms are Net 60 days. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.

**11. CHANGES.**

a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if this contract includes services, (vi) description of services to be performed; (vii) time of performance (e.g., hours of the day, days of the week); (viii) place of performance, and (ix) terms and conditions of this contract required to meet Buyer's obligations under Government prime contracts or subcontracts. Seller shall comply immediately with such direction.

**b.** If any such change increases or decreases the cost or time required to perform this contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within ten (10) days, and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 30 days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

**c.** If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

**12. DISPUTES.** Any dispute that arises under or is related to this contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

**13. FORCE MAJEURE.** Seller shall not be liable for excess re-procurement costs pursuant to the "Cancellation for Default" article of this contract, incurred by Buyer because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within three days after the beginning of any such cause.

**14. TERMINATION FOR CONVENIENCE.** Buyer may terminate all or part of this contract, effective as of any date specified by Buyer. In the event of a Termination of Convenience

**a.** Supplier shall take actions necessary to mitigate the costs and expenses it incurs in relation to the termination

**b.** Without limiting the foregoing, Supplier shall:

- i. Immediately, as of the effective date of termination, stop work and discontinue placing orders with subcontractors in relation to the terminated portion of a Contract; and
  - ii. Unless Buyer requests such items be delivered to Buyer, sell or reassign all completed Tooling, in-process materials or raw materials relating to the terminated portion of a Contract, obtain scrap credits and settle vendor claims
  - c. Upon Buyer's request, Supplier shall deliver to Buyer any completed Tooling, in-process material and raw material related to the terminated portion of the Contract.
  - d. Supplier shall have no claim for any cost, expense, damage, or liability of any kind in relation to the Termination for Convenience, except as specifically set forth in Article E.
  - e. Supplier shall be entitled to claim termination cost which equals the sum of the following.
    - i. The price paid by Supplier to acquire materials, labor costs and overhead costs which have been incurred by Supplier in connection with the items which remain undelivered under the terminated portion of a Contract; and
    - ii. Payments which have been made to Supplier's suppliers, in accordance with this Article E, in relation to the items ordered prior to the effective date of termination;
- Less:
- iii. The sum of all the scrap credits and proceeds or value of reassignment of in-process material and items, or both, sold or reassigned pursuant to this Article E

#### **15. CANCELLATION FOR DEFAULT.**

- a. Buyer may, by written notice to Seller, cancel all or part of this contract if (i) Seller fails to deliver the Goods within the time specified by this contract or any written extension; (ii) Seller fails to perform any other provision of this contract or fails to make progress, so as to endanger performance of this contract, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
- b. Seller shall continue work not canceled. If Buyer cancels all or part of this contract, Seller shall be liable for Buyer's excess re-procurement costs.
- c. Buyer may require Seller to transfer title (to the extent Buyer does not already have title) and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools; dies, jigs, fixtures, plans, drawings, information, contract rights and other materials (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this contract. Upon direction from Buyer,

Seller shall also protect and preserve property in its possession in which Buyer or any customer of Buyer has an interest.

**d.** Buyer shall pay the contract price for Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of this contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders of Seller or its subcontractors.

**e.** If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties shall be as if the contract had been terminated according to the "Termination for Convenience" article of this contract.

**f.** All intellectual property, including, but not limited to, drawings, software, and models, required to finish the project shall be delivered to Buyer.

**16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING.** Seller shall not assign any of its rights or interest in this contract or subcontract all or substantially all of its performance of this contract, without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its duties or obligations under this contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This contract is non-transferable. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials. Any subcontractor of Seller shall be bound by all of Seller's duties and obligations hereunder. Seller shall be liable to Buyer for any breach of duty or obligation by any subcontractor of Seller.

**17. PUBLICITY.**

**a.** Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this contract or the Goods or program to which it pertains.

**b.** Any labeling or marking of equipment by Seller must be approved by Buyer prior to being incorporated.

**18. BUYER'S PROPERTY.**

**a.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request,

Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged, destroyed or otherwise compromised. As directed by Buyer, upon completion, termination or cancellation of this contract, Seller shall deliver such property, to the extent not incorporated in delivered Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses.

**b.** All items designated paid for by a pre-set milestone payment plan become the property of the Buyer immediately upon payment. This includes, but is not limited to, all items procured by Seller that are listed on the invoice.

**19. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.** Seller will indemnify, defend and hold harmless Buyer and its customers from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, awards exceeding actual damages and/or attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to or arising out of the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customers (collectively, "Indemnitees"). Buyer and/or its customers will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of Indemnitees. Seller will have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. For purposes of this article only, the term Buyer will include Buyer and all of its subsidiaries and all officers, agents and employees of Buyer or any Buyer subsidiary.

**20. CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS.**

**a.** During the term hereof, as deemed necessary by Buyer, Buyer may do one or more of the following: (i) present Seller with new and unique business opportunities; (ii) present Seller with Proprietary Information and Materials of Buyer, or access to such materials; (iii) provide Seller with goodwill support such as compensation and expense reimbursements in accordance with this contract; (iv) provide contact with Buyer's customers and vendors/manufacturers in order to help Seller develop and/or produce Goods for Buyer and its customers, (v) provide Seller with new and unique training, and/or (vi) provide Seller with technical help as deemed reasonably necessary.

**b.** Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information including Purchase



Orders; (b) tangible items and software containing, conveying or embodying such information, including, but not limited to, designs, techniques, processes, programs, drawings, blueprints, algorithms, the identity of vendors/manufacturers of the Goods or similar Goods, customer lists and files, nonpublished customer information of special value not generally known to the public, including all trade secrets and vendor/manufacture pricing information, terms of customer and vendor/manufacture contracts and vendor/manufacture and customer contact information; (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract or other agreement referencing this contract; and (d) information designated as “confidential” or “proprietary” or information that Buyer indicates through its policies or instructions should not be disclosed to anyone outside Buyer without Buyer’s written approval (collectively referred to as “Proprietary Information and Materials”). The controlled disclosure of Proprietary Information and Materials to other contractors, customers or vendors for legitimate business purposes and the availability of the Proprietary Information and Materials to others outside Buyer through independent investigation and effort will not remove it from protected status as Proprietary Information and Materials under this contract if Seller was first entrusted with the Proprietary Information and Materials during the term of this contract. Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this contract and/or any other agreement referencing this contract. This restriction is not intended to prevent Seller from disclosures compelled by law (e.g., a subpoena) so long as Seller gives Buyer at least ten (10) business days advance notice prior to disclosure. Seller also agrees to use the goodwill and contacts developed with Buyer’s customers, vendors and contractors for the exclusive and sole benefit of Buyer and not to Buyer’s detriment, during the term of this contract and thereafter. However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce Seller’s Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered under this contract or any other agreement referencing this contract. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer’s Proprietary Information and Materials.

c. Upon Buyer’s request at any time, and in any event upon the completion, termination or cancellation of this contract, Seller shall return to Buyer all of Buyer’s Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller’s compliance with this article.

d. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Materials and articles “Confidential, Proprietary and Trade Secret Information and Materials,” “Noncompete/Noncircumvention” and “Inventions, Copyrights, Etc.” hereunder. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials.

e. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

**21. NONUSE/NONCIRCUMVENTION/NONSOLICITATION.** Seller agrees that the following covenants are reasonable and necessary covenants for the protection of Buyer’s business interests described in this contract:

a. “Covered Business” means any business activities that involve engineering and manufacturing services related to aerospace or integrated plant floor automation systems, the Goods, or any business so similar in nature that it competes for opportunities or customers of Buyer. Those customer entities and individuals and vendor/manufacture entities and individuals who had contact with Seller while Seller was under contract with Buyer and/or about whom Seller received confidential information from Buyer or by virtue of Seller’s relationship with Buyer, are defined herein as “Covered Customers” and “Covered Vendors/Manufacturers” respectively. Seller shall provide a list of its existing customers within forty-eight (48) hours of the date of this contract, and these customers shall be specifically excluded from the term “Covered Customers.” Seller may not circumvent the purpose of any restriction set forth in this Agreement by engaging in business indirectly through another person or entity.

b. Seller agrees that it will not participate in a Covered Business (a) by providing services to a Covered Business (whether as an agent, consultant, advisor, independent contractor or other capacity) that would involve any use or disclosure of Buyer’s Proprietary Information and Materials, and/or (b) by owning, investing in, or providing financial support to, a Covered Business as a shareholder, partner, member, sole proprietor, creditor or in any other way, in each case that would involve any use or disclosure of Buyer’s Proprietary Information and Materials.

c. Seller will not, directly or indirectly, except in connection with Seller’s service to Buyer, service, call on, solicit, take away, enter into a transaction with, or cause the solicitation of, (i) any Covered Customer of Buyer for the purpose of engaging in a transaction, and (ii) any Covered Vendor/Manufacturer, wherever located, for the purpose of engaging in a transaction. For the purposes of this article, “transaction” means any purchase or sale, lease or license of goods or services similar to the Goods, or any agreement relating to the sale or placement of goods or services or equipment similar to the Goods.

d. Prior to Seller engaging any employees, contractors, agents or other representatives engaged by Seller to perform services in connection with this contract (the "Contractor Parties"), Seller shall advise all Contractor Parties of Seller's confidentiality, nondisclosure and other obligations under this contract. Seller agrees to be responsible for ensuring that all Contractor Parties (who may only be provided Buyer's Proprietary Information and Materials on a need to know basis) maintain the confidentiality, nondisclosure and other obligations of Seller under this contract. Seller shall cause each permitted Contractor Party to whom confidential information is disclosed to sign an agreement substantially the same as this contract. Seller shall indemnify Buyer and hold Buyer harmless against all proceedings, claims, losses, costs (including reasonable professional fees), damages and expenses that may be incurred or suffered by Buyer as a result of any claims of third parties arising from any Contractor Party's acts, which if such act was taken by Seller, would be considered a breach or other violation of this contract. Seller agrees not to circumvent the application of this contract through or by any affiliate or other person or entity.

e. Each of the restrictions set forth in articles "Confidential, Proprietary and Trade Secret Information and Materials," "Noncompete/Noncircumvention" and "Inventions, Copyrights, Etc." hereof shall survive the termination of this contract by any means. The existence of any claim or cause of action of Seller against Buyer, whether predicated on this contract or otherwise, shall not constitute a defense to the enforcement by Buyer of said covenants.

**22. INVENTIONS, COPYRIGHTS, ETC.** Seller by execution of this contract assigns to Buyer, or its assigns and successors or legal representatives, all right, title and interest in and to any and all inventions or any improvements therein (the "Inventions") or copyrights ("Copyrights") of whatever kind or character, discovered, conceived and/or developed either individually by Seller or jointly with others, during the course of Seller rendering services to Buyer whether or not using Buyer's information, including Proprietary Information and Materials, data, facilities and/or materials, provided the subject matter of the Invention or Copyright is within the general scope of the duties and responsibilities of one providing services such as those of Seller to Buyer, or occurs as a result of Seller's knowledge of a particular interest of Buyer in the subject matter of the Invention or Copyright. Seller further agrees that all Inventions and Copyrights are Buyer's sole and exclusive property and that any work generated or performed by Seller (including Goods) that is copyrightable shall be considered a work made for hire. Seller agrees to assist Buyer at any time during or after the period of time in which Seller renders services to Buyer, at Buyer's expense, in the preparation, execution and delivery of any and all Inventions, disclosures, patent or Copyright applications or any improvements related to such Inventions, disclosures or patent or Copyright applications within the scope and intent of this contract that are required to obtain patents or Copyright registrations in the United States or other countries, or for such other proceedings as may be necessary to vest all right, title and interest of such items in Buyer, its assigns and successors or legal representatives. Seller acknowledges that the foregoing covenants are integral terms of this contract and are given in consideration of Buyer agreeing to use the services of and purchase the Goods from Seller. Prior patents, trademarks, and copyrights of Seller that are disclosed to Buyer in writing

within 48 hours of the full execution of this contract are not governed by the foregoing provisions.

**23. INDEMNITY.** Seller hereby agrees to indemnify Buyer and hold Buyer harmless against all proceedings, claims, losses, costs (including reasonable professional fees), damages and expenses that may be incurred or suffered by Buyer as a result of any claims of third parties arising from Seller's acts or omissions, or any breach or alleged breach by Seller of any of the provisions stated in this contract or any failure to perform the services contemplated by this contract, except to the extent said breach or failure is directly caused by Buyer.

**24. RECORDS AND AUDIT.** Seller shall retain all records and documents pertaining to the Goods for a period of no less than ten (10) years after final payment by Buyer. Such records and documents shall date back to the time this contract was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Goods procured by Buyer. Buyer shall have the right to examine, reproduce and audit, from time to the time upon reasonable notice, all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "Changes," "Termination for Convenience" or "Cancellation for Default" articles of this contract.

**25. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control shall extend to the customers of Buyer. Buyer may also, at Buyer's option, by prior written notice from Buyer's Authorized Procurement Representative, extend such rights to other customers of Buyer.

**26. GRATUITIES.** Seller warrants that neither it nor any of its employees, agents, subcontractors, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this contract or securing favorable treatment under this contract.

**27. RIGHTS AND REMEDIES.**

a. Seller agrees that a breach or threatened breach, based on reasonable and good faith evidence of a breach on Seller's part, of any covenant contained in articles "Confidential, Proprietary, Trade Secret Information and Materials," "Noncompete/Noncircumvention" or "Inventions, Copyrights, Etc." of this contract will cause irreparable damage to Buyer. For that reason Seller further agrees that in the event of breach or threatened breach by Seller or by Seller's employees, partners, subcontractors, representatives, agents or any person or entity related, directly or indirectly, to Seller, of any provision of such articles, Buyer shall be entitled as a matter of right to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction, and/or (ii) any other legal and equitable relief to which it may be entitled, including any and all monetary damages that Buyer may incur as a result of said

breach or threatened breach. Without limiting the generality of the foregoing, Buyer may offset against any amounts owed to Seller any damages incurred by Buyer as a result of Seller's breach of this contract. If any action at law or in equity is necessary to enforce or interpret the terms of this contract, the prevailing party will be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

**b.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this contract, or in exercising any rights or remedies under this contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

**c.** Except as otherwise limited in this contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

**28. COMPLIANCE WITH LAWS; INDEPENDENT CONTRACTOR.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls. Seller is an independent contractor and not an employee of Buyer. Buyer will not be obligated to provide Seller or Seller's employee(s) with Buyer benefits to the extent permitted or required by law for employees. In particular, Seller is solely responsible for withholding income and the payments and filings for federal and state income tax purposes to the extent permitted or required by law. Seller shall indemnify and hold Buyer harmless from any liability costs or expenses, including any interest, penalties or attorneys' fees, that may be incurred by Buyer in connection with Seller's failure to comply with federal and state tax laws.

**29. GOVERNING LAW; VENUE.** This contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to the conflict of law provisions of the State of Texas. This contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods. The agreed sole venue and sole jurisdiction for any claims or disputes under this contract is Dallas, Texas.

**30. GOVERNMENT CLAUSES.** All FARS and DFARS identified in Buyer's Quality documents listed on Buyer's website are incorporated herein by reference. The FAR and DFAR therein, where applicable by their terms, are incorporated herein by reference as if set forth in full text. The full text of all clauses incorporated by reference is also available at <http://www.acquisition.gov/>. The effective version of each FAR or DFAR clause shall be the same version as that which appears in Buyer's prime contract, or higher-tier subcontract under which this Agreement is a subcontract. In such clauses, unless otherwise specifically stated, the term "Contractor" means Seller except in the term "prime contractor", "subcontractor" means Seller's Subcontractor, "Contract" means "this Purchase Order" (for purposes of this Article 30, "this Purchase Order" is agreed and understood to include this contract), and both "Contracting Officer" and "Government, mean "Buyer" except in the terms "Government Property",

“Government-Furnished Information”, “Government-Owned Property”, “Former Government Surplus Property”, or as otherwise indicated.

**31. CONFLICT MINERALS.** Seller agrees that it will be compliant with Section 1502 the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Conflict Materials Rule”) when required by Buyer.

**32. SUSPENSION OF WORK.**

a. Buyer’s Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this contract for a period not to exceed 180 days. Within such period of any suspension of work, Buyer shall (i) cancel the suspension of work order; (ii) terminate this contract in accordance with the “Termination for Convenience” article of this contract; (iii) cancel this contract in accordance with the “Cancellation for Default” article of this contract, or (iv) extend the stop work period.

b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) this contract is not canceled or terminated; (ii) the suspension results in a change in Seller’s cost of performance or ability to meet the contract delivery schedule; and (iii) Seller submits to Buyer’s Authorized Procurement Representative a written claim for adjustment within 20 days after the suspension is canceled.

**33. ACCESS TO PLANTS AND PROPERTIES.** Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or any customer of Buyer.

**34. ENTIRE AGREEMENT; AMENDMENT.** This contract, together with all purchase orders, attachments, exhibits, supplements, and other terms referenced in this contract, contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this contract. No amendment or modification of this contract shall bind either party unless it is in writing and is signed by Buyer’s Authorized Procurement Representative and an authorized representative of Seller.

**35. NOTICES.** Any notice under this contract will be in writing and will be deemed to have been duly given (i) when delivered personally, (ii) five (5) business days after such notice is deposited in the United States mail, registered, postage prepaid, and addressed, to Buyer, at its principal office, or to Seller at Seller’s address as shown on the signature page to this contract, and (iii) when return receipt is activated if sent by email.

**36. SELLER REVIEW.** Seller acknowledges that Seller has read and is fully familiar with the terms of this contract, that Seller has had a reasonable opportunity to consider this contract, and that after such review, Seller finds that the promises and considerations provided by Seller in this contract are not greater than necessary for the protection of Buyer’s goodwill and legitimate business interests and do not create undue hardship for Seller or the public.

**37. WAIVER.** The actual or apparent waiver by either party to this contract of a breach of any provision of this contract will not operate or be construed as an actual or constructive waiver of that breach or any subsequent breach by any party. Waivers are not effective unless in writing and signed by the party granting the waiver.

**38. MULTIPLE COUNTERPARTS.** This contract may be executed in counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement.

**39. SEVERABILITY AND SAVINGS CLAUSE.** If any one or more of the provisions contained in this contract is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the validity and enforceability of any other provisions of this contract, and it is the intention of the parties that there shall be substituted for such invalid, illegal or unenforceable provision a provision as similar to such provision as may be possible and yet be valid, legal and enforceable. Without limiting the generality of the foregoing, the parties expressly authorize the court to revise, delete or add to the restrictions contained in this contract to the extent necessary to enforce the intent of the parties and to provide Buyer's goodwill, Proprietary Information and Materials, trade secrets and other business interests with effective protection.